United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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For the
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FILED MAR 1 1957

Joseph W. Stewart
CLERK

No. 13,559

MURRAY R. BOWDAN,

Appellant

621

v.

HILDA L. BOWDAN,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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QUESTIONS PRESENTED

1. Is a wife entitled to a judgment for absolute divorce on the ground of desertion where, by her own testimony, she made no protest to the husband's leaving and, thereafter, though she knew of his whereabouts during the entire period of separation, refused to communicate with him and made no effort to discover why he had left, how long he intended to remain away from the home, or to protest his absence?

2. Where the husband accused of desertion contends the wife acquiesced in the separation, is it not proper cross-examination, in order to test the credibility of the wife, to inquire of her whether she would have allowed the husband to return to the home if he had requested to do so?

3. Is it reasonable to conclude that ownership of a lucrative business corporation was intended to pass from a husband to his wife where the consideration for the conveyance was left blank in the purported instrument of conveyance, and no evidence of payment of a consideration was introduced, and the evidence disclosed that the purpose of the transaction was to effect a tax savings?

4. Did the Court act arbitrarily and capriciously in awarding the appellee a judgment for $27,814.65, being one-half of a joint stock brokerage account held by the appellant and appellee, the said account having been liquidated while the parties were living together as husband and wife and the proceeds thereof co-mingled and a large portion invested in the husband's business which at the time of trial was shown to be practically defunct?

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This complaint for absolute divorce on the ground of desertion was filed by the appellee in the United States District Court for the District of Columbia. Judgment for absolute divorce was entered for appellee. Appellant has appealed to this court under the provisions of Sections 1291 and 1292 of Title 28 of the United States Code as amended September 1, 1948.

STATEMENT OF THE CASE

Complaint for absolute divorce on the ground of desertion was filed by the appellee, hereinafter referred to as the wife, on the 8th day of October, 1954, alleging that the appellant hereinafter referred to as the

husband, left their abode on or about the latter part of September, 1951, and since that time continuously lived and until the present time has lived separate and apart from the wife, without her consent.

Concerning the alleged act of desertion, the testimony of the wife and her corroborating witnesses was that the husband and wife were living in the home of the wife's parents, and at the time aforesaid, the husband suddenly announced to his wife in the presence of her parents and several relatives, gathered together in the living room of the parents' home, "I am leaving you today", and a further remark to the effect that he wanted the other persons present to be witnesses to the statement. (J.A. 36).

The wife made no protest to this announcement by the husband, claiming she was too shocked to reply, and soon after the alleged announcement was made, she left the home to go for an automobile ride with her parents and relatives. Upon her return home later the same day, the husband had left the home and has not returned since (J.A. 35-36). The husband was in business in the District of Columbia and she knew his whereabouts but made no effort thereafter to contact him and he did not contact her. (J.A. 57).

The husband testified that he did not leave home on the occasion alleged but placed the time a week or so later. He further testified that he not only left the house with the consent of his wife, but rather at her request and at the insistence of his mother-in-law who believed that a separation would be beneficial to the wife's health (J.A. 116, 117, 118, 119, 156, 157).

The husband also testified that he telephoned the wife many times during the period of separation to inquire about her health and whether she wanted him to return. On each occasion that he telephoned, the wife complained of her health and manifested a desire to remain separated. (J.A. 118).

During the trial, the husband stated that he still sought a reconciliation (J.A. 120). The wife testified there was no chance of a reconciliation as far as she was concerned (J.A. 57, 58).

The second phase of the case pertains to the property rights of the parties.

The husband and wife formerly lived in New York and came to the District of Columbia in 1940 where they lived with the parents of the wife. They have one son, born in 1933. Before coming to the District of Columbia, the husband was engaged in a dress business (J.A. 10, 11).

Soon after their arrival in the District of Columbia both husband and wife obtained employment, he as a beverage salesman and she as a saleslady in a dress shop (J.A. 12). About two years later, the husband purchased the entire stock of Selma's, Inc., a dress shop, for $680 (J.A. 14), $500 of which sum he borrowed from the wife's mother who was later reimbursed out of the profits from the business (J.A. 15, 16). The husband stocked the dress shop with merchandise owned by him and valued by him at about $1200. (J.A. 93). The wife valued this same merchandise at about $300. (J.A. 50).

The wife contended that the husband transferred complete ownership of the aforesaid Selma's Inc., a corporation, to her individually in August of 1942 (J.A. 19). The bank account of this business was maintained in the names of the husband and wife, trading as Selma's Gowns, and the account remained joint even after the alleged transfer of ownership of the business to the wife (J.A. 30, 98, 99). The husband contended that the agreement of conveyance of the corporation to the wife was merely done for tax purposes, and that the agreement itself failed to state a consideration, that no actual consideration passed and the corporation was never dissolved according to law (J.A. 96, 97).

The husband also owned and operated a wholesale beverage business which was operated separately from Selma's, Inc. (J.A. 28).

In December of 1946, a stock brokerage account was opened with the firm of Orvis Bros., in the joint names of the husband and wife. The wife contends that the husband withdrew practically all of the funds from said

stock brokerage account and used them in his wholesale beverage business (J.A. 33). The husband contended that some of the money withdrawn from the stock brokerage account may have gone into Selma's, Inc. and other to the wife personally; that no accounting of these funds was kept between him and his wife because everything they had was considered joint and the money was used for their mutual benefit (J.A. 107, 108, 138, 147, 148).

The court found the husband guilty of deserting the wife and awarded the wife judgment for divorce on that ground. The court further found that the wife was the sole owner of Selma's, Inc.; that the husband was the sole owner of the wholesale beverage business; that each owned one-half interest in the stock brokerage account with Orvis Bros., and, further, that during the period February 28, 1950 and December 1, 1951, the husband withdrew $55,639.31 in excess of the money deposited by him in said account during said period and that all of the aforesaid money was invested by the husband in his beverage business and that he did not account to the wife for any of it. That the wife waived alimony.

The court concluded as a matter of law that the wife was entitled to a divorce from the husband on the ground of desertion by the husband for more than two years and that the wife was entitled to recover $27,814.65, being one-half of the jointly owned money withdrawn by the husband from the aforesaid brokerage account.

SUMMARY OF ARGUMENT

1. To constitute desertion there must be more than the living apart for the prescribed statutory period of time. The appellee had the burden of proving that the separation was against her will. She must also show, even if the original abandonment by the appellant was wrongful and without her consent, that she had not acquiesced in the separation or accepted it as satisfactory.

From the testimony and conduct of the appellee in this case, the only reasonable conclusion to be drawn is that the wife completely and unequivocally acquiesced in the separation.

2. To constitute desertion there must also be a showing that the spouse charged with desertion abandoned the other with the intention of remaining separated permanently.

The mere fact that the separation continued for a period of over two years does not in and of itself denote an intention to remain separated permanently, where the spouse accused of deserting testified that on many occasions he attempted to effect a reconciliation.

3. The court erred in over-ruling a question put to the wife on cross examination as to whether during the period of alleged desertion she would have permitted her husband to return if he had requested to do so.

The appellant contends that this question has a direct bearing on the credibility of the wife's testimony and is entirely relevant to the issue as to whether she acquiesced in the separation.

4. The court erroneously concluded that the business of Selma's, Inc. was the sole business and property of the appellee and that the appellant had no right, title and interest therein.

The appellee failed to establish by competent evidence that any consideration passed to the appellant for the transfer of said business to her individually, and the only logical and reasonable conclusion to be drawn from the evidence is that the transaction between the appellant and appellee

in this regard was for bookkeeping and tax purposes only and not to legally divest the appellant of his interest in the business.

5. The court acted arbitrarily and capriciously in awarding the appellee judgment in the amount of $27,814.65 against the appellant.

The said amount being one-half of jointly owned property of the appellant and appellee, which had been rightfully and lawfully used and expended for the joint benefit of the appellant and appellee while they were living together as man and wife.

The action of the court in this regard was confiscatory and penalized the husband unlawfully.

ARGUMENT

I.

THE APPELLEE FAILED TO ESTABLISH DESERTION BY THE APPELLANT AND HAS SHOWN BY HER TESTIMONY AND CONDUCT TO HAVE ACQUIESCED IN THE SEPARATION.

It is not disputed by the appellant that he lived separate and apart from the appellee for the statutory period of time required to obtain a divorce on the ground of desertion. There is, however, a conflict in the testimony as to how the separation came about. The appellee says that the appellant left without her consent. The appellant denies this and says that he left at the request of the appellee and her mother, in whose house they were then living.

First, the court's attention is respectfully directed to the testimony of the appellee regarding the circumstances of the appellant's leaving. She contends that on the day he left, they had been discussing a joint brokerage account they maintained with Orvis Brothers & Co.; that when she rebuked him for selling stocks in the account without her knowledge or consent he became very disturbed and went upstairs; that about an

hour later her brother and sister-in-law came to take them for an automobile ride when her husband appeared on the stairs and announced that he was leaving her that day (JA 35, 36).

It is significant to note here that the appellee did not remonstrate with the appellant in any way about his leaving at that time or at any time thereafter. On cross examination she testified that she had never telephoned the appellant or tried to communicate with him in any way (JA 57). The appellant contends that regardless of whether you take the appellant's or the appellee's version of how and when the separation took place, the record is clear that the appellant, the appellee and the appellee's mother were continuously arguing regarding financial matters prior to the separation. The appellant testified that he left the home at the request of his wife and mother-in-law, both of whom felt that it would be beneficial to the wife's health for the husband to live separate and apart. The appellant's version of the separation is substantiated by the following testimony of the appellee (JA 56, 57):

"Q. What is your health condition at the present time, Mrs. Bowdan?

A. I would say good.

Q. What was your health condition at the time you came to Washington in 1942?

A. Harassed.

Q. Your health condition was harassed?

A. Yes. Aggravated.

Q. And what was the aggravation?

A. It was due to Mr. Bowdan's tongue lashing and brain washing tactics.

Q. What do you mean by brain washing tactics?

A. Well, Mr. Bowdan is a very dominating man, and everyone has to bow down to him, and he made me and my son subservient to him. He called us the most unique names in the language, in the American language, and he made, tried to make, my child insecure. He is a Dr. Jekyl and Mr. Hyde. On the outside he is a very wonderful person, but at home he is a devil. That is what I meant by harassed.

Q. Have you been in a nervous state, directing your attention to around 1950 and 1951?

A. Nervous?

Q. What about your nervous condition?

A. I should say I'm on my two feet all the time; I had to be to support him the way he wanted to be supported.

Q. Did you ever tell him to get out of the house?

A No, sir.

Q. Since September, 1951 to the present, how many times have you called him and asked him to come back?

A. Called him? I didn't call him.

Q. Did you ever try to communicate with him?

A. I did not. No.

Q. Is there any chance of reconciliation between you and him at this time?

A. No, sir."

Further, on the point of whether the appellee acquiesced in the separation, the court's attention is directed to the testimony of the appellee's brother, Dr. Irving Lichtman, (JA 62):

"Q. Did you visit them, and very often?

A. Very often.

Q. And when you visited them there in their home, how did you find their domestic life?

A. It was rarely tranquil.

Q. Did you ever suggest to your sister and your brother-in-law that they move from the house of your parents.

A. After their separation.

Q. And you suggested what after their separation?

A. That perhaps it might be advisable for them to establish a domicile of their own.

Q. And why did you suggest that?

A. I was anxious to preserve the well-being of my sister."

The record is silent as to what the appellee's reaction was to the brother's suggestion. It would seem logical to assume, therefore, that her reaction was unfavorable to the suggestion. This also indicates that she was not interested in getting to the root of the trouble between her and her husband and was satisfied to live separate and apart from him. This is further evidenced by the testimony of the appellant concerning the attitude of his wife on the occasion of a meeting between them. On this occasion, the appellant and appellee met in a hospital where their son was recuperating from an operation. The appellant's testimony regarding the conversation with the appellee on this occasion, which is not

denied by the appellee, was as follows (JA 163, 164):

> "Q. Do you recall the time your son was operated on in New York City?
> A. Yes, sir.
> Q. Go on. Suppose you say what you want to say.
> A. When I was notified of this operation, I went up there to make my boy as comfortable as possible. My mother and sister were there daily to assist him, make him comfortable, and my wife was again acting up and wouldn't even say hello. Just as mean and miserable as could be. I drove her home to her hotel one evening and I asked her to have dinner with me. She said, "No". She just jumped out of the car, ran up to her hotel. Never cared to talk to me. I couldn't do anything that I wanted to."

It will no doubt be argued on behalf of the appellee that there was no duty on her to persuade the husband to return. The appellant contends, however, that her silence, coupled with the foregoing overt acts and statements evidencing her attitude toward the appellant clearly demonstrated her complete acquiescence in the separation. In this jurisdiction, the question of whether a deserted spouse has an obligation or duty devolving upon her to use her efforts to terminate the desertion depends upon the facts and circumstances of each particular case. In the case of Underwood v. Underwood, 50 App. D.C. 323, the contention was made that the appellee who had obtained a divorce on the ground of desertion was without standing, since she took no steps to induce the appellant to return or made any offer to go to him. In that case the court said:

> "It is apparent from the record that such efforts would have been unavailing. When appellant left, he deliberately notified his wife that under no circumstances would he live with her, that he had ceased to love her, that he could not bear to touch her. Under these circumstances, there was no duty devolving upon the wife to use her efforts to terminate the desertion." (Underscoring supplied)

From the foregoing language of this court, it is clear that under certain circumstances a wife has a duty to use her efforts to terminate the desertion. Appellant contends that this is such a case, even conceding,

for the sake of argument, that the abandonment by the husband was wrongful and without the consent of the wife. In this case there definitely was no showing that the husband had ceased loving his wife or that any effort on the wife's part to seek his return would have been unavailing. On the contrary the husband testified he was always willing to return and was still willing to reconcile at the time of trial, but that his wife would not even speak to him. Certainly the wife's testimony and conduct toward her husband showed that she did not want him to return and acquiesced completely in the separation after the alleged abandonment.

In the case of Creasey v. Creasey, 151 S.W. 219, 168 Mo. App. p. 68, it was held:

> "A husband's abandonment of his wife does not constitute desertion if within one year thereafter she showed by her words or conduct that she acquiesced in the separation."

In the case of Olson v. Olson, 27 Pa. Super. 128-131, the court said:

> "What may have been desertion in its inception but has become a separation with mutual consent within two years, is not ground for divorce. The mutual consent that will prevent a divorce upon the ground of desertion may be inferred from the conduct of the parties and need not be put in form of a written agreement." (Underscoring supplied)

In a District of Columbia case, Secor v. Secor, 1 McArthur 130, 8 D.C. App. 630, the court held:

> "A divorce will not be granted for desertion when the separation was merely by agreement of the parties or the party complaining subsequently consented to or acquiesced in such separation."

In another District of Columbia case, Parks v. Parks, 73 App. D.C. 93, 116 Fed. 2d, 536, where the plaintiff appealed from a judgment dismissing a complaint for absolute divorce on the ground of voluntary separation, this court had this to say about the silent acquiescence of the

wife to the separation:

> "Even if she did, in fact, wish her husband to return, in the course of time her silent acquiescence in the separation made it voluntary in the statutory sense."

The appellant submits that this case is entirely distinguishable from the case of Hitchcock v. Hitchcock, 15 App. D. C. 81, where the wife appealed a divorce granted her husband on the ground of desertion on the proposition that whether she was justified or not in leaving her husband, he was not willing to receive her again and had even taken steps to prevent her return and that, therefore, a separation from him for two years and upward could not be regarded as having been against his will and as constituting a wilful desertion in contemplation of law. The court held in the Hitchcock case that it could not accede to the correctness of this proposition as applicable to the circumstances of the parties to that suit. From this language, it seems clear that the proposition is a sound one, depending upon the facts of each individual case.

On the question of willingness of the party deserted to receive back the deserter, the court had this to say:

> "There are also cases which hold the deserted party is not entitled to a divorce on the ground of desertion unless he or she was at all times willing, during the separation, to receive back the deserter if requested, but the great weight of the authorities is to the effect that unwillingness to receive back the deserter is not material where it is not disclosed to the deserter or manifested in any way so as to constitute consent to the separation."

It is the appellant's contention that the incident in the New York hospital heretofore mentioned, the failure of the appellee to produce evidence or testimony as to her reaction to the brother's suggestion made after the separation that they procure their own home, and the silent acquiescence of the appellee to the appellant remaining away from her mother's home, constitute sufficient manifestation of her consent to the separation.

II.

THE APPELLEE FAILED TO CARRY THE BURDEN OF PROVING THAT THE APPELLANT ABANDONED HER WITH THE INTENTION NOT TO RETURN AND WITH THE PREMEDITATED PURPOSE TO TERMINATE THE MATRIMONIAL RELATION.

In this case the only testimony regarding the appellant's act of desertion was that he suddenly announced, "I am leaving you today". The appellee did not offer any evidence as to why the appellant left the home or as to his intention to terminate the marital relationship. This information was available to her. The husband conducted a business in the District of Columbia all during the period of the alleged abandonment and the wife did not at any time during this period ascertain from the husband his intention in this regard, but, according to her own testimony, silently and without protest of any kind acquiesced in the separation.

There was not one scintilla of evidence offered by the appellee to refute the husband's testimony that he did not intend to terminate the marital relation or to remain away from his wife permanently. The husband testified as follows, concerning the separation:

"Q. Did there come a time when you separated from your wife?

A. Yes, sir.

Q. When was that?

A. That was in the latter part of 1951.

Q Will you tell the Judge the circumstances surrounding that separation?

A. I remember very clearly that that night my wife came to me and said, "You had better get out, because I am feeling bad and if you go now, then in a few months if I feel better, I will call you and see if we can get back together." The next morning I went to work and did not return.

Q. Now at the time your wife said this, what did you tell her?

A. There is no reason. I do not want to leave home. I was very fond of her, very considerate of her. I told her if she would take medical care, she would get better.

Q. After you left, have you contacted her?

A. I have.

Q. Has she ever contacted you?

A. No, sir.
Q. On how many occasions have you contacted her?
A. Oh, about once every month, month and a half, or two months.
Q. What was your conversation with her?
A. Asked her how she was feeling, how she is getting along, what is new, and would she like me to come back.
Q. And what was her answer to those things?
A. No. She wasn't feeling good at all. She didn't feel good at all." (JA 117, 118, 120)
Q. When you separated from your wife, did she protest your going?
A. No.
Q. Was it with your wife's full accord that you left?
A. Yes, sir.
Q. Would you take your wife back at the present time?
A. Yes, sir."

The only evidence in this case on behalf of the appellee to show that the husband intended to permanently abandon the marital relationship with her is the denial by the appellee of the husband's testimony that he telephoned her seeking a reconciliation on many occasions. Therefore, the only ground that the trial court had to make the necessary determination that the husband left with the intention to abandon the marital relationship was the fact that the separation lasted for the required statutory period of two years.

The appellant submits that this is not a reasonable conclusion in light of the facts and circumstances of this case. Here there is no evidence that the husband ceased to love and care for his wife, and his testimony that he did, indeed, care for his wife and desired a reconciliation remains unchallenged in the record.

This Court in Hitchcock v. Hitchcock, supra, stated as follows:

> "It is willful desertion and abandonment and not a justifiable separation when one withdraws absolutely from the marital relation without the intention to return; and against the will and without the consent and connivance of the other party and without legal cause."
>
> (Underscoring supplied.)

One of the principal distinctions between the Hitchcock case, supra, and the present case is that the wife in the former case, after the abandonment, brought a separate action for maintenance and support against the husband, which the court held to be sufficient evidence of her purpose and intent to persist in her abandonment of the husband. In the present case, we have no such evidence and, in fact, the record is entirely bare of any testimony or evidence from which it could reasonably be concluded that the husband withdrew from the marital relation with not the intention to return. His testimony is that he did not have such an intention and this testimony remains uncontradicted.

In the case of Lundy v. Lundy, 202 P. 809, 23 Ariz. 213 it was held that to constitute desertion there must be more than living apart for the prescribed time, it being essential that the deserting party intends to make the separation permanent. As pointed out before, there is absolutely no showing in this case that the husband intended to make the separation permanent.

It was the burden of the appellee to prove by clear and convincing evidence the husband's intention not to return and his absence for the statutory period, per se, does not prove this intention, especially, as in this case, where the uncontradicted evidence is that the wife repulsed efforts of the appellant to even converse with her (JA 163-164).

III.

THE COURT ERRED IN NOT PERMITTING THE WIFE TO TESTIFY AS TO WHETHER SHE WOULD HAVE PERMITTED THE HUSBAND TO RETURN IF HE HAD REQUESTED TO DO SO.

The appellant contends that it was perfectly proper cross examination to inquire of the wife whether she would have accepted him back if he had requested her to do so. Under the circumstances in this case, where the appellee contends that the separation was without her consent

and the appellant's contention is that the separation was with the appellee's consent, it becomes material to ascertain the attitude of the wife toward the separation in order to weigh the credibility of her testimony and to properly evaluate the facts and circumstances of this particular case in light of the wife's conduct, all of which the appellant contends clearly showed her acquiescence to the separation.

IV.

THE COURT ERRED IN HOLDING THAT THE APPELLEE WAS THE SOLE OWNER OF SELMA'S, INC.

The record is clear that the business of Selma's, Inc., a District of Columbia corporation, was purchased by the appellant, the appellant being originally the principal, if not the sole stock holder of the corporation (JA 44-45, 92-93).

The appellee testified that she and appellant agreed to buy the business and that he made the transaction (JA 14). Her testimony in this regard is as follows:

> "Q. We have got down to the time where you had found this ad for Selma's, Inc.
> A. Yes, sir.
> Q. Did you agree to buy it, or not?
> A. We agreed to buy it, yes, sir.
> Q. And in whose name was it bought?
> A. In the corporation.
> Q. No, as between you and your husband, who was to take the title? Who made the transaction?
> A. He made the transaction. Yes, sir."

The business was purchased on February 12, 1942 (JA 15) and thereafter, on August 7, 1942, an agreement purporting to be an agreement of conveyance was signed by the appellant and appellee. This agreement (JA 17) recited that the corporation, as vendor, had agreed to sell the business to the appellee. The agreement provided for the consideration to be paid by demand promissory note, but there was no consideration

provided for in the agreement.

The appellant testified that he was never paid any consideration under this agreement and that the business was, in fact, never conveyed to the appellee (JA 96).

The appellee testified that in 1942 the appellant conveyed the business to her and that she gave the appellant a promissory note in the amount of $250 in consideration of the transfer of the business to her. However, she failed to produce the note or to subpoena the appellant, whom, she contended, had the note, to produce it (JA 17).

A written agreement, as well as an oral contract, requires a consideration to support it, a consideration being an essential ingredient to any contract. Littlepage v. Neale Publishing Co., 34 App. D.C. 257 and Watson v. Dunlap, 2 Cranch C.C., 14, 2 D.C. 14.

In the present case, the alleged instrument of conveyance did not provide for any consideration and, therefore, it became incumbent upon the appellee to produce competent evidence to show payment of a consideration. The best evidence to show this would have been the cancelled note or some other receipt or evidence of payment. The appellee's word alone is not sufficient to support her contention that a consideration was given for the conveyance, especially where, as in this case, the appellant denied receiving the note or any consideration.

The appellant testified that the purpose of the dissolution agreement was to save taxes (JA 96) and this is borne out by the testimony of Joseph Bulman, Esquire, the attorney for the appellant and appellee who drafted the papers at their request (JA 170). The fact that the corporation was never formally dissolved is clearly borne out by the testimony of an employee of the office of the Recorder of Deeds who testified, in answer to a subpoena to produce the records of that office, that the records disclosed that the corporation had not been dissolved (JA 167-168).

The appellant contended that all business transactions between the appellee and him were handled on a family basis of joint ownership and for the best interests of the family. To clearly demonstrate that it was not the intention of the appellee and the appellant to transfer the actual ownership of Selma's, Inc. to the appellee the court's attention is directed to the undisputed fact that the appellant, after the execution of the purported agreement of conveyance, personally deposited $1000 to Selma's Gowns account in 1943, and another $3000 as late as 1947. He also testified that between 1942 and 1950 he put between $40,000 and $50,000 into Selma's, Inc. (JA 225).

According to the testimony of the appellee, she is shown to have been netting a profit from the business of between $5000 and $6000 per annum at the time of the alleged transfer and that the profits and income had increased each year until in 1955, where it is shown that she had a net income of approximately $22,000 a year (JA 55, 56).

Certainly, if the alleged conveyance in 1942 was intended to be a genuine transfer of ownership and a strict business transaction as between two strangers, the appellant would have demanded a larger consideration than $250, and, certainly, would not have continued to place personal funds in the account of the business of Selma's, Inc.

To further illustrate that this was not intended to be a bona fide transfer of title to the business, it should be noted that the lease to the business property remained in the joint names of the appellant and appellee and that the bank account of the business likewise remained in their joint names until the time of their separation (JA 53).

V.

THE COURT ACTED ARBITRARILY AND CAPRICIOUSLY IN AWARDING THE APPELLEE JUDGMENT IN THE AMOUNT OF $27,814.65 AGAINST THE APPELLANT.

It is clear from the evidence that the brokerage account was opened by the appellant and the appellee in their joint names with mutual

funds for the mutual benefit of the family unit. The evidence shows that the appellant started the business of Selma's Gowns, Inc., that the appellee devoted her full time to this enterprise and that the profits from this business were held in a joint account. The appellant devoted part of his time to Selma's Gowns and also operated a wholesale beverage business, which he contends was operated in his name only for the purpose of convenience in operating the business and that he considered his wife a partner in everything they did (JA 138). It can be assumed, therefore, that had the wife not filed this action for divorce and the appellant having expressed a desire to reconcile, that she and the family would have participated in the enjoyment of any profits that might have been realized from the beverage business, and likewise would as a family unit have shared in any loss.

Appellee gave the appellant carte blanché to handle the joint brokerage account as he saw fit. She testified that she knew nothing about stocks or the stock market and relied solely upon his judgment in such matters (JA 29 and 30). It is not clear from the record exactly how much money was originally invested in the stock brokerage account by the respective parties, as they both testified that no record of this was kept. This, again, bears out the contention of the appellant that he and his wife operated as a family unit in financial matters and that they were, in fact, both bread winners and co-owners of all of their property.

It is the appellant's contention that he had every right to use funds from the joint brokerage account wherever it was needed most in the family enterprises and the fact that some of the funds were used to bolster his wholesale beverage business which was badly in need of capital should not make him personally liable to the appellee because the beverage business failed (JA 185-186, 228-229, 230).

CONCLUSION

The record clearly shows the following factual situations:

(1) The wife did not utter one word of protest to the husband's announcement that he was leaving, and

(2) Thereafter, knowing his whereabouts in the same city in which she lived, she did not attempt to ascertain why he had left or how long he intended to remain away;

(3) That when she came into personal contact with her husband while visiting their son in the hospital during the period of separation she refused to speak to him or respond to his attempts to converse with her;

(4) The appellee was unwilling to abide by her brother's suggestion, made during the period of alleged desertion, that she and the appellant obtain a home of their own.

(5) The appellee did not deny that she acquiesced in the separation, but merely denied that she consented by word of mouth to the husband's leaving.

(6) There was absolutely no showing on behalf of the appellee that the husband refused to live with her after the initial alleged act of abandonment.

(7) The undisputed testimony that during the period of separation the husband met appellee in the hospital on the occasion of the son's illness and that she endorsed checks made to her son's order definitely proves that she had contact with the appellant. Therefore, it is inconceivable that she could not produce any testimony or evidence to refute the husband's testimony that he did not leave her with the intention of remaining away permanently, and her failure to produce such evidence or testimony raises the presumption that none existed.

The appellant contends that the failure of the appellee to protest the appellant's leaving and her refusal to speak to him during the entire period of separation clearly demonstrates that the separation was voluntary on her part and precludes the granting of a divorce on the grounds of desertion. A divorce on this ground is further precluded by reason of the failure of the appellee to show by a preponderance of the evidence that the alleged abandonment by the appellant was intended to be permanent.

As regards the property settlement the court was without authority to grant a decree of divorce and therefore lacked jurisdiction to settle the property rights of the parties.

The court's decision regarding the property rights of the parties was clearly arbitrary, confiscatory and against the weight of the evidence. The evidence clearly showed that the alleged agreement of conveyance of Selma's, Inc. to the appellee was purely a ficticious transfer, without consideration and that the appellant and appellee treated the business as their joint property up to the time of their separation. The same is true about their stock brokerage account. The funds from their various business endeavors were so co-mingled as to be indistinguishable.

The inequity of the court's decision is demonstrated by the fact that the business of Selma's, Inc.,which was awarded to the appellee, was a prosperous business,while the wholesale beverage business awarded the husband had lost money since 1951 (JA 185-186). The record shows that the appellant was in very bad financial condition, yet the court awarded the wife a judgment against the appellant in the amount of $27,814.65.

The decision of the court reduces the appellant to a veritable pauper while the appellee is left a wealthy person. The appellant and appellee jointly accumulated this wealth while living together as man and wife and the division of the property in this case is manifestly inequitable, illegal and unwarranted.

Respectfully submitted,

ROBERT T. SMITH
910-17th St., N.W.
Washington 6, D.C.
Attorney for Appellant

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JOINT APPENDIX

488 [Filed October 8, 1954]
IN THE UNITED DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action, File No.

4314-54

HILDA L. BOWDAN,

Plaintiff

v.

MURRAY R. BOWDAN,

Defendant.

Plaintiff's address is 2721 Woodley Place, N.W., Washington, D.C.

COMPLAINT

For absolute divorce on the ground of desertion and for settlement of property rights.

1. Plaintiff has been a bona fide resident of the District of Columbia for more than two years next before the commencement of this action.

2. Plaintiff and defendant were married in New York City on April 7, 1932. They have one son, born May 26, 1933, who is now an adult.

3. In or about the year 1940, the parties took up their residence in the District of Columbia, and at that time neither of them owned any money or property of substantial value and they were insolvent. Thereafter both of the parties engaged in gainful occupations and enterprises; and in or about the year 1942 the plaintiff went into the business of conducting a dress shop from which she has since derived a substantial income. The plaintiff permitted the defendant to handle

large amounts of money earned by her and to make investments in their joint names and for their joint benefit.

4. In the year 1951, the defendant without the consent of the plaintiff, sold securities which were owned by the parties jointly and he derived therefrom the total amount of approximately $70,000, all of which he has deposited or reinvested in securities in his sole name.

5. The defendant has in his possession the certificates for 200 shares of stock in the D W G Cigar Corporation which are in the sole name of the plaintiff and which are her sole property, and he has failed and refused to surrender the same to the plaintiff.

489 6. On or about September 18, 1951, the defendant deserted the plaintiff and since then he has lived separated and apart from her for more than two years and until the present time.

7. For many years before the time of his aforesaid separation the defendant failed and refused to contribute towards the support of the plaintiff and their child and he was himself supported in part by the plaintiff, all of which enabled the defendant to employ the major portion of his income for his own purposes. Since the time of his aforesaid desertion the defendant has contributed nothing towards the support of the plaintiff and he has contributed only a relatively small amount towards the maintenance and education of their child which burden has been borne principally by the plaintiff.

8. The defendant owns and operates a prosperous business in the District of Columbia and he owns substantial amounts of money and property, including reinvested proceeds of the jointly owned securities sold by the defendant as hereinbefore related.

9. All the records concerning the acquisition of the aforesaid jointly owned securities and the sale thereof are in the possession of the defendant, and without the aid of said records the plaintiff is not able to plead with greater particularity than she has done herein.

WHEREFORE, the plaintiff demands judgment as follows:

1. That she be awarded a divorce from the bond of matrimony existing between her and the defendant on the ground of desertion for more than two years.

2. That she be awarded permanent alimony, and that the amount of said alimony be fixed in consideration of the benefit which the defendant has derived from the services, property and income of the plaintiff and from the contributions which the plaintiff heretofore has made in the form of supporting herself and the child of the parties.

490 3. That the plaintiff be awarded her just share of the property owned by the parties jointly; that the defendant be required to account to the plaintiff for the proceeds of the jointly owned property wrongfully sold by him; that all money and property now held by the defendant in his sole name which was in any manner acquired by him through the employment on reinvestment of the proceeds from the wrongful sale of the jointly owned securities of the parties be declared to be held in trust by the defendant for the joint benefit of the parties, and that the plaintiff be awarded her just share thereof.

4. That the defendant be required to surrender to the plaintiff all of her personal property in his possession.

5. That the plaintiff be awarded all temporary and permanent relief to which she may be entitled, including counsel fees, suit money, and costs.

/s/ Jean M. Boardman
Shoreham Building, Washington, D.C.
Attorney for Plaintiff

Upon my oath I state that the above complaint is true.

/s/ Hilda L. Bowdan
Plaintiff

SUBSCRIBED AND SWORN TO before me in the District of Columbia this 30th day of September, 1954.

/s/ Genevieve M. Foreman
Notary Public, D.C.

[Filed November 16, 1954]

491 ANSWER OF DEFENDANT

First Defense

The Complaint fails to state a claim against this defendant upon which relief can be granted.

Second Defense

The plaintiff, insofar as her action pertains to an accounting from the defendant and for other relief not connected with her claim for divorce, is guilty of laches.

Third Defense

1, 2. The defendant admits the allegations of Paragraphs 1 and 2 of the Complaint.

3, 4. The defendant admits that in or about the year 1940, the parties took up their residence in the District of Columbia, but he denies the remaining allegations of said Paragraphs 3 and 4 of the Complaint.

5. Defendant admits that he has in his possession certificates of stock in the D W G Cigar Corporation, but he denies the remaining allegations of said Paragraph 5.

6. Defendant denies the allegations of Paragraph 6 of the Complaint.

7, 8, 9. Defendant denies the allegations of Paragraphs 7, 8 and 9 of the Complaint.

WHEREFORE, having fully answered, and reserving the right to

492 file a counterclaim herein, the defendant demands that the plaintiff's Complaint be dismissed with costs against the plaintiff.

/s/ Murray R. Bowdan

/s/ H. Max Ammerman

Attorney for Defendant

* * *

DISTRICT OF COLUMBIA, SS:

MURRAY R. BOWDAN, being first duly sworn according to law, on oath deposes and says that he has read the above Answer of Defendant by him subscribed; that he verily believes the allegations of fact therein contained are true.

/s/ Murray R. Bowdan

Subscribed and sworn to before
me this 15th day of November, 1954.

/s/ Sylvia Sawyer

Notary Public, D.C.

[CERTIFICATE OF SERVICE]

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493 [Filed May 22, 1956]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action having come on for hearing and the pleadings and evidence having been considered, the court makes the following

Findings of Fact

1. The plaintiff is a bona fide resident of the District of Columbia and she had been such a resident for more than two years next before the commencement of this action.

2. The plaintiff and defendant were married in New York City on April 7, 1932. Their only child is now an adult.

3. In the latter part of September, 1951, the defendant deserted the plaintiff in the District of Columbia in that without the consent of the plaintiff he discontinued living with her in their former home, and since then continuously until the present time he has lived separate and apart from her without cohabitation.

4. For a number of years prior to the separation of the parties, and continuously since, the plaintiff has owned and operated in the District of Columbia a dress shop business under the business name of Selma's Gowns. The plaintiff is the sole owner of said business and the defendant has no right, title, or interest therein.

5. For a number of years prior to the separation of the parties, and continuously since, the defendant has owned and operated in the District of Columbia a wholesale liquor business under the business name of Murray R. Bowdan and Company. The defendant is the sole owner of said business and the plaintiff has no right, title, or interest therein.

6. In December, 1946, the plaintiff and the defendant in their
494 joint names opened a brokerage account with the District of Columbia office of Orvis Brothers and Company for the purpose of dealing in securities and commodities. From time to time thereafter both the plaintiff and the defendant made substantial contributions in the form of money and securities to the capital of said brokerage account, but they commingled their contributions without keeping or attempting to keep any records as to the respective amounts contributed by each, and at all times it was understood and agreed between them that the account was their joint property and that each had an equal interest therein. The court finds as a matter of fact that the said brokerage account was a joint venture and that each of the parties owned a one-half interest therein.

7. In the year 1950, the defendant without the knowledge or consent of the plaintiff commenced to liquidate the aforesaid brokerage account and to withdraw therefrom money which he retained for his own use and benefit. Between the dates of February 28, 1950, and December 1, 1951, when the account was closed, he withdrew the total amount of $55,639.31 in excess of the money deposited by him in said account during said period. All of the aforesaid money withdrawn by the defendant was invested by him in the wholesale liquor business owned by him personally, and he has never accounted to the plaintiff for any part thereof.

8. For many years before the separation of the parties the plaintiff was possessed of a certificate issued to her in her sole name evidencing her ownership of 100 shares of the stock of the D W G Cigar

Corporation. The plaintiff is the sole owner of said certificate and of the stock evidenced thereby and the defendant has no right, title, or interest therein. At the time defendant deserted the plaintiff, the aforesaid stock certificate was in the possession of the defendant having been entrusted to him by the plaintiff for safekeeping. Since then the defendant has failed and refused to surrender said certificate to the plaintiff and he now has it in his possession.

495 9. The plaintiff enjoys a substantial income from the dress shop conducted by her, and in open court at the time of trial she waived all claims for alimony.

10. In connection with this litigation, including investigations, preparation for trial, and the trial, the plaintiff has incurred substantial liability for counsel fees.

Conclusions of Law

1. The plaintiff is entitled to be awarded a divorce from the bond of matrimony existing between her and the defendant on the ground of desertion for more than two years.

2. The plaintiff is entitled to recover from the defendant the sum of $27,814.65, the same being one-half of the jointly owned money withdrawn by the defendant from the aforesaid brokerage account.

3. The plaintiff is entitled to judgment directing the defendant specifically to deliver to her the certificate for 100 shares of the stock of the D W G Cigar Corporation hereinbefore mentioned.

4. The defendant should be required to pay to the plaintiff the sum of $2,500.00 on account of counsel fees incurred by her in this action.

/s/ F. Dickinson Letts
Judge

Approved as to form
/s/ William Fadler
Attorney for Defendant

[Filed May 22, 1956]

496 JUDGMENT FOR ABSOLUTE DIVORCE

This action having come on for hearing and findings of fact and conclusions of law having been entered herein, it is by the court this 22nd day of May, 1956.

ADJUDGED:

1. The plaintiff, Hilda L. Bowdan, is hereby awarded a divorce from the bond of matrimony existing between her and the defendant, Murray R. Bowdan, on the ground of desertion for more than two years; provided, however, that this judgment shall not be effective to dissolve said bond of matrimony until the expiration of the time allowed for taking an appeal, until the final disposition of any appeal which may be taken, or, in any event until the expiration of six months from the date hereof.

2. The plaintiff is hereby awarded judgment against the defendant for the recovery of the sum of $27,314.65 in satisfaction of the plaintiff's just share of the jointly owned property of the parties.

3. The defendant is hereby directed forthwith to deliver to the plaintiff the certificate for 100 shares of the stock of the D W G Cigar Corporation issued in the name of the plaintiff which said certificate is now in the possession of the defendant.

4. The defendant shall pay to the plaintiff the sum of $2,500.00 on account of counsel fees incurred by her in connection with this action.

/s/ F. Dickinson Letts

Approved as to form
/s/William F. Fadler
Attorney for Defendant

[Filed July 11, 1956]

497 NOTICE OF APPEAL

Notice is hereby given this 11th day of July, 1956, that Defendant, Murray R. Bowdan hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 12th day of June, 1956 in favor of Hilda L. Bowdan against said Murray R. Bowdan.

/s/ Theodore Jaffe
Attorney for Murray R. Bowdan

Mail Copy to: Jean Boardman

* * *

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1 [Filed July 5, 1956]

Monday, May 7, 1956.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED THAT the above-entitled matter came on regularly for hearing before his Honor, the Hon. F. Dickinson Letts, Judge of said Court, without the intervention of a jury at 10:00 o'clock, a. m., when were present on behalf of the respective parties:

APPEARANCES:

JEAN M. BOARDMAN, ESQ.,
on behalf of the Plaintiff.

WILLIAM F. FADLER, JR., ESQ.,
on behalf of the Defendant.

Whereupon, the following proceedings were had and evidence introduced as follows, to-wit:

* * * * * *

11 HILDA L. BOWDAN,

the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOARDMAN:

* * * * * *

Q. What is your street address? A. 2721 Woodley Place, Northwest.

Q. How long have you continuously lived in the District of Columbia?

* * * * * *

12 A. I have lived here since 1940, yes.

Q. Are you the wife of the defendant, Murray R. Bowdan? A. Yes, sir.

Q. When and where did you marry him? A. In New York, in 1932, on April 7th.

Q. Have you supplied me with this copy of your marriage certificate? (Tendering paper to witness) A. Yes, I have.

MR. BOARDMAN: I offer this in evidence.

* * * * * *

THE COURT: Plaintiff's Exhibit No. 1 will be received.

(Whereupon, the document referred to was marked Plaintiff's Exhibit No. 1, and received in evidence.)

BY MR. BOARDMAN:

Q. Did you and Mr. Bowdan have a child? A. Yes.

13 Q. What is his first name? A. Newton Doran.

* * * * * *

Q. When was he born? A. May 26, 1933.

Q. Prior to 1940, immediately prior to 1940, where did you and your husband child live?

* * * * * *

A. In New York City. I can give you the address.

* * * * * *

Q. How long had you lived there? A. Eight years.

Q. Prior to 1940 what employment did your husband have in New

York City? A. He had various jobs, mostly as a salesman selling dresses. He went into business once or twice but none of the ventures were successful.

Q. Immediately prior to the time you came here what had been his last employment? A. He represented a Boston concern, selling dresses on the road with an office in New York City.

Q. Did something happen with respect to that employment. A. Yes.

14 He did not get along with the owners and he gave up the job and we were on the rocks, so to speak.

Q. Was there a time when he had no employment when he came here? A. Oh, yes, off and on.

Q. I am talking about immediately before you came here? A. Immediately before he came here he was unemployed.

Q. Did you have any employment? A. No, sir.

Q. At that time did he have any money, or did you have any money? A. No.

Q. Did you have any? A. No. I had nothing left.

Q. Did you have any debts? A. Yes, we did.

Q. At the time you came here what debts did you owe in New York? A. Several months rent and some grocery bills.

Q. Were you able to pay them? A. No, sir; we were not.

Q. And what decision was made about leaving New York? A. We decided to come to Washington with my family to help us get started.

15 Q. Did your husband agree to that, or did he object? A. Yes, he agreed very readily. My brother came up and brought us down by car.

Q. Why did he do that? A. Well, we had no money.

Q. When did you come here, as well as you can remember? A. About June, 1940.

Q. How old was your son at that time? A. He was seven.

Q. And where did you take up your place of abode when you came here, you and your husband and your son? A. With my parents, at 2721 Woodley Road.

Q. What are their names? A. G. Lichtman and Dora Lichtman.

Q. And where did they live, again? A. 2721 Woodley Road.

Q. That is the place where you still live? A. Yes.

Q. You have lived there continuously since 1940? A. Yes.

Q. Did your husband have any objection to living with your parents? A. No. He welcomed it.

Q. I presume it is obvious that neither one of you had any employment in the District of Columbia at the time you came here. Is that

16 correct? A. No, sir; we had no employment.

Q. What did you do? Did each of you look for work? A. Yes, we both did.

Q. Who got a job first? A. I got a job first.

Q. When did you get it? A. A few weeks after I arrived here.

Q. And where was it? A. It was on Connecticut Avenue with a dress shop.

Q. What was the name of that dress shop? A. Rosalie Robbins Dress Shop.

Q. How much did you get paid there? A. I got paid $60.00 a week and, if any money was made, I was promised a bonus, which I did receive.

Q. Did your husband obtain employment? A. Some time after that, yes.

Q. How long after that? A. A few weeks.

Q. Where did he obtain the employment? A. With my brother.

Q. Where, and under what circumstances? A. At the "Try-Me" Bottling Company.

Q. In what capacity? A. Selling liquor on a commission basis.

17 Q. Did he tell you what he made at that time? A. Yes, he did, sir.

Q. How much was it? A. It varied, $18.00, $20.00, $25.00, and increased as time went on.

Q. Eighteen to twenty-five. What do you mean? A. A week.

* * * * * *

Q. And then it increased? A. It increased gradually, yes.

* * * * * *

18 Q. Now, Mrs. Bowdan, how long did you continue to work for somebody else, as you have stated? A. Until the expiration of that lease at the Rosalle-Robin Shop, until 1942.

Q. You worked approximately two years, is that correct? A. Yes, sir.

Q. And what happened then in 1942? A. Well, I looked for some other job and came across an ad advertising the dress shop that had been closed for some time.

Q. What was the name of the dress shop? A. Selma's Inc. And since I was still working I asked Mr. Bowdan to speak to the owners of that and see if there was any possibility of obtaining that; if it were in the realm of possibility.

Q. And did he do so for you? A. Yes, sir, he did.

Q. In this period of approximately two years after you had come from New York who paid your living expenses? A. I did.

Q. Did Mr. Bowdan pay anything from his earnings? A. No, sir; he did not.

Q. Do you mean that completely, or approximately? A. I mean it completely, because he had a car and he had to pay for that, and

19 he didn't earn enough to do both.

Q. What arrangement did you have with your parents? A. My parents just wanted to see us get along.

Q. No, tell us what arrangements you had. A. Our arrangements were that they would take care of us until we were on our feet.

Q. Did you pay them anything?

* * * * * *

A. I didn't pay rent but I paid for the groceries and I paid for the maid.

Q. You lived there without paying rent? A. For a time.

* * * * * *

Q. Did you buy the groceries for your parents, yourself as well as your husband and your son? That's what I am getting at.

* * * * * *

A. I do say that I paid the majority of the groceries.

Q. Did your husband pay anything for the groceries? A. No, sir.

Q. Did he give you any money? A. No sir, he did not.

Q. We have got down to the time where you had found this ad for Selma's Inc. A. Yes, sir.

Q. What did you learn that you could buy the business for? A. $685.00.

Q. And wasn't it $680, to be exact? A. $680 probably.

Q. And what was agreed to be done? A. We had no money --

Q. No - did you agree to buy it or not? A. We agreed to buy it, yes, sir.

Q. And in whose name was it to be bought? A. In the corporation.

Q. No, as between you and your husband who was to take the title? Who made the transaction? A. He made the transaction, yes, sir.

Q. He signed the papers, is that correct? A. He signed the papers.

Q. And how was the money paid, the $680? A. My mother gave me a check for $500 and the balance was given by a note and paid off from the business.

Q. Did Mr. Bowdan put up any money for the purchase of the business? A. No, sir; he did not.

MR. BOARDMAN: I offer in evidence, Your Honor, the agreement of February 12, 1942 between Murray Bowdan and Selma Freedman.

* * * * * *

(Agreement dated February 12, 1942 between Murray R. Bowdan and Selma Freedman received in evidence as Plaintiff's Exhibit No. 2.)

MR. BOARDMAN: Shall I read this, Your Honor?

THE COURT: You may do that, or summarize it.

MR. BOARDMAN: I will summarize it, if there is no objection.

It is an agreement dated February 12, 1942 signed by Murrary R.

22 Bowdan and Selma Freedman. It recites that Selma Freedman is the president and treasurer of Selma's Inc., a District of Columbia corporation, and that there are 35 shares of corporate stock outstanding, and that in consideration of the sum of $680, $500 to be paid in cash and the balance in a 60-day promissory note, that Selma Freedman will sell the 35 shares of stock to Murray R. Bowdan, and that she will resign, and some clauses that we are not concerned with about not engaging in any similar business.

That is the substance of it.

BY MR. BOARDMAN:

Q. Do you know, Mrs. Bowdan, to whom those shares of stock were issued? A. To me, my mother, and Mr. Bowdan.

Q. But principally in Mr. Bowdan's name? A. Yes, sir.

Q. I don't believe this is important, but do you know the exact number of shares each of you held? A. There were 35 in all.

Q. You don't remember, is that right? A. No, sir, I don't.

Q. And who became president of the corporation? A. I don't remember that either, it is so far back.

Q. Did you take possession of the business shortly after this contract was made? A. On February 12 I took possession of it, yes.

23 Q. That's the same day as the contract? A. Yes, sir.

Q. Where was the business? Describe to His Honor its precise location. A. It was in an apartment upstairs, about 50 to 60 stairs, upon 1345 Connecticut Avenue. That is Connecticut Avenue near Dupont Circle, sir. There were about 60 stairs up.

Q. It was an upstairs place? A. Yes, sir.

Q. What was it you acquired that was valued at $680? What was up there when you got it? A. Just the fixtures and a few dresses -- fixtures and a few dresses.

Q. By that I guess it is apparent there wasn't much there, is that right? A. No, sir, but there was a small showcase downstairs for display that kept me walking up and down.

Q. Did you get some stock in trade? A. There were a few dresses.

Q. Did you get more? A. Yes. At that time I acquired some dresses from Mr. Bowdan that when he left the firm of Max Factor he had taken those dresses with him.

24 Q. Who ran the business there after February 12, 1942? A. I did, sir.

Q. And did your husband participate in it? A. No, sir, he did not.

Q. What was he doing thereafter? A. He was selling liquor.

Q. Was your mother ever paid back the $500 that she advanced to help you buy this business? A. Yes, sir, she was paid back.

Q. And who paid her back? A. The business paid her back, sir.

Q. How did it happen that this transaction was made in the name of your husband? A. I was working and I asked him to consummate the deal for me.

Q. Why did he sign the contract? A. Well, he wasn't busy as I was. I was working all the time.

Q. Did there come a time when the business was put in your name? A. Yes, sir, it was.

Q. I show you this document and ask you if that is your signature? A. Yes, sir.

Q. And is that the signature of your husband? A. Yes, sir; it is.

25 Q. Whereby the corporation contracted to sell the business to you personally? A. That's right.

MR. BOARDMAN: I offer this in evidence, Your Honor.

* * * * * *

26 BY THE COURT:

Q. Do you know your husband's signature? A. Yes, sir; I do.

Q. That is his signature? A. Yes, sir.

THE COURT: Very well; that is Plaintiff's Exhibit No. 3 and it is received.

(Document entitled "Agreement of Conveyance, dated August 7, 1942 between Selma's Inc., and Hilda L. Bowdan, marked and received in evidence as Plaintiff's Exhibit No. 3.)

MR. BOARDMAN: May it please your Honor, the substance of this is that it is entitled "Agreement of Conveyance." It is dated August 7, 1942, and is between Selma's Inc., a corporation of the District of Columbia, and Hilda L. Bowdan, and it recites that the corporation as vendor has agreed to sell the business of the corporation to Hilda L. Bowdan, in consideration of (blank) dollars, to be paid by promissory note of the purchaser -- a demand promissory note.

And then it, at considerable length, conveys all of the property of the corporation, including the stock in trade, franchise, assets, goodwill - and I will not read the several pages here transferring all the assets of the corporation to Hilda L. Bowdan.

27 And Hilda L. Bowdan assumes all the obligations and liabilities of the corporation, and then it is signed by Hilda L. Bowdan, as president of Selma's Inc., and attested by M. R. Bowdan as secretary of the corporation.

Then it is signed by Hilda L. Bowdan as an individual, as the purchaser, and then there is an acknowledgment on the back that Murray R. Bowdan acknowledged it to be his act and deed and the act and deed of Selma's Inc., and attested by a notary public and a notarial seal, and a similar acknowledgement on the part of Hilda L. Bowdan, as her act and deed.

* * * * * *

BY MR. BOARDMAN:

Q. Mrs. Bowdan, around the time that that transfer was made to you do you recall what was done with respect to the corporation?

A. Yes, sir. The corporation was dissolved.

* * * * * *

Q. I show you this document which is entitled "Statement of Dissolution of Selma's Inc.," and pointing out that it is signed by Hilda L. Bowdan, Murray R. Bowdan and D. Lichtman, as trustees acting last before dissolution, and ask you if you know these signatures? A. Yes, sir, I do.

28 Q. Is that your signature? A. Yes, sir, it is.

Q. Is that Murray R. Bowdan's signature - your husband? A. Yes, sir, it is.

Q. And who is D. Lichtman? A. My mother.

Q. Is that her signature? A. Yes, sir.

Q. Is she now living? A. No, sir, she is not.

Q. And then underneath it is signed Murray R. Bowdan individually. Whose signature is that? A. Murray R. Bowdan.

Q. And then annexed to it is a document called "Certificate" which is signed by Murray R. Bowdan, and then sworn to. Whose handwriting is that Murray R. Bowdan? A. That is Murray R. Bowdan that is sitting right there (indicating).

Q. Is that your husband? A. Yes, sir, my husband.

MR. BOARDMAN: I offer this in evidence, Your Honor.

* * * * * *

(Document entitled "Statement of Dissolution of Selma's Inc.," marked and received in evidence as Plaintiff's Ex. No. 4.)

29 MR. BOARDMAN: Plaintiff's Exhibit No. 4, Your Honor in substance is this:

It is entitled "Statement of dissolution of Selma's Inc." It says that whereas the corporation has ceased to exist and has become dissolved by virtue of the filing of the hereunto annexed certificate, and that pursuant to certain specified provisions of law of the District of Columbia, that Murray R. Bowdan, Dora Lichtman and Hilda L. Bowdan, as trustees acting last before the dissolution are authorized to be the trustees for creditors and stockholders of the said dissolved corporation with full power to settle the affairs of the same, to collect

its assets and pay its outstanding debts.

Then it recites that the sole assets of Selma's Inc., consists of one certain promissory note payable to the corporation by Hilda L. Bowdan and bearing even date, in the amount of (blank) dollars.

And then there are other things but I don't believe it is essential to this.

That is signed, Your Honor, by Hilda L. Bowdan, Murray R. Bowdan, D. Lichtman, as trustees, and by Murray R. Bowdan, individually.

Then annexed to it is a document entitled "Certificate," which is sworn to in the form of an affidavit and certifies that the corporation has been dissolved and that this is evidence of the sale of all the property and assets to Hilda L. Bowdan.

It is signed by Murray R. Bowdan and sworn to by him on the 7th day of August, 1942.

May it please Your Honor, I have here, prepared to put in evidence if necessary, the minutes of the meeting of the corporation whereby it was resolved to dissolve, and also a document, waiver of notice of the meeting; both of these documents being signed, one of them by Murray Bowdan, as secretary, and the waiver of notice by the three stockholders.

I didn't see any point in putting these in unless I am informed here that they deny that this corporation was dissolved.

May I ask Mr. Fadler whether they still take that position, or do you concede that it has been dissolved?

MR. FADLER: We say the corporation was not formally dissolved. There was some talk about a consideration but it has not been formally dissolved as required by law.

BY MR. BOARDMAN:

Q. I show you a document which is entitled "Waiver of notice" dated August 7, 1952, and signed by Hilda L. Bowdan, Murray R. Bowdan and D. Lichtman, and I ask you if you can identify those signatures?

A. Yes, sir, I can.

Q. Is that your signature, Hilda L. Bowdan? A. Yes, sir.

31 Q. And who is Murray R. Bowdan? A. My husband.

Q. Is that his writing? A. This is his writing.

Q. And D. Lichtman is the writing of your deceased mother? A. Yes, sir, it is.

Q. I also show you a document entitled "Minutes of special meeting of stockholders of Selma's Inc.," with respect to a meeting held August 7, 1942, and signed by Murray R. Bowdan, secretary, and ask you whose signature that is? A. That is my husband's, Murray R. Bowdan.

MR. BOARDMAN: Have you seen these, Mr. Fadler? I offer these in evidence, Your Honor.

* * * * * *

MR. FADLER: No objection to the entry of these. However, we say they have no force and effect.

THE COURT: I understand your position. You agree that the documents were executed but question their legal effect?

MR. FADLER: That is right. We question their legal effect. That is exactly right.

32 THE COURT: Plaintiff's Exhibits 5 and 6 will be received.

(Waiver of Notice of special meeting of Selma's Inc., marked and received in evidence as plaintiff's Exhibit No. 5.)

(Minutes of meeting of Selma's Inc., August 7, 1942, marked and received in evidence as plaintiff's Ex. No. 6.)

MR. BOARDMAN: Exhibit No. 5 is the waiver of notice.

Exhibit No. 6 is the minutes of meeting. May it please Your Honor, Plaintiff's Exhibit No. 5 is entitled Waiver of Notice and recites that the undersigned being all of the stockholders of Selma's Inc., do waive notice of time and place and purpose of special meeting to be held on August 7, 1942 for the purpose of approving the resolution of the

Board of Trustees in connection with the sale of the assets of the company to Hilda Bowdan.

The same is dated August 7, 1942 and is signed by Hilda L. Bowdan, Murray R. Bowdan and D. Lichtman.

Plaintiff's Exhibit No. 6 is entitled Minutes of Special Meeting of Stockholders of Selma's Inc., and in substance it recites that a special meeting of stockholders of Selma's Inc., was held on August 7, 1942, there being present Murray R. Bowdan, Dora Lichtman and Hilda L. Bowdan, constituting all the stockholders of the company, and that it appearing to the stockholders that an agreement had been made

33 to sell the business, the assets and good-will and franchise of the corporation, that it is resolved that the hereunto annexed agreement containing the terms and conditions of the proposed sale and all the assets of this corporation including the good will and franchise to Hilda Bowdan, which agreement has heretofore been approved by the Board of Trustees of this corporation be and the same hereby is approved. Signed by Murray R. Bowdan, secretary.

BY MR. BOARDMAN:

Q. Now, Mrs. Bowdan, following that time when you acquired the business did you conduct it as your own business? A. Yes, sir, I did.

Q. And you still do, I believe. A. I still do.

Q. And you have never reincorporated? A. No, sir, I have not.

Q. And since that time have you filed Federal income tax returns? A. Yes, sir, I have.

Q. And up until the time you and your husband separated did you file joint returns or each of you file a separate return? A. When they were in order we filed a joint return, when the law came out.

34 Q. As husband and wife, for joint returns? A. Yes, sir.

Q. And since they have raised this question about the dissolution I will ask you this: Has Selma's Inc., a corporation, ever filed an income tax return? - that is since 1942? A. No, sir.

Q. And have you and your husband at any time ever filed a partnership return? A. No, sir.

Q. And on your joint returns have you turned in your income that you have earned separately? A. Yes, sir.

Q. Mrs. Bowdan, when you last testified about Selma's place it was upstairs, is that correct? A. Yes, sir.

Q. And did there come a time when you moved? A. Yes, sir.

Q. And when was that? A. About the first of September, 1942.

Q. And where did you move? A. I moved to 1307 Connecticut Avenue, sir, my present address.

Q. Was that downstairs? A. Downstairs; a street location, yes,
35 sir.

Q. And do you recall, Mrs. Bowdan, whether at the time the corporation transferred the business to you you had in mind to make this move? Do you recall that? A. I had hoped to find a place available, yes, sir.

Q. Had you found this place? A. I found this place. They were going out of business.

Q. Had you found this place? A. No, I hadn't at the time.

Q. It was merely a coincidence? A. That's right.

Q. The two had no connection? A. No, sir, they had not.

Q. From what you said I take it you found a place of business you could acquire? A. Yes, sir, I did.

Q. What was that? A. That was the Kalmia Shop. I had been told they were going out of business and I went to see them.

Q. And it was called the Kalmia Shop? A. Yes.

Q. And who owned it? A. Daley Crawford.

36 Q. Did you desire to acquire that location? A. Yes, sir, I did.

Q. Did you under into contract to purchase the business? A. Yes, sir, I did.

Q. And I show you this document and ask you what that is. A. That is an agreement ma de between myself and the Kalmia Shop to buy the business.

Q. Is this your signature, Hilda L. Bowdan? A. Yes, sir, it is.

Q. And is that Daley Crawford's signature? A. Yes, sir.

Q. And while I am here I will show you another document entitled Bill of Sale, which if His Honor has no objection I will identify as being a bill of sale of that business, and ask you if that is Daley Crawford's signature? A. Yes, sir.

Q. And that is what you got when you purchased the business? A. That is a list of the things, yes, sir.

MR. BOARDMAN: I offer these in evidence, the agreement as Plaintiff's Exhibit 7 and the bill of sale as plaintiff's Exhibit 8. I take it there is no objection, Mr. Fadler?

37 MR. FADLER: No objection, Your Honor.

* * * * * *

(Agreement dated August 31, 1942 between Daley Crawford and Hilda L. Bowdan marked and received in evidence as plaintiff's Exhibit No. 7.)

(Bill of Sale from Daley Crawford to Hilda L. Bowdan, marked and received in evidence as Plaintiff's Exhibit No. 8.)

MR. BOARDMAN: May it please Your Honor, Plaintiff's Exhibit No. 7 is entitled "Agreement." It is dated August 31, 1942. It is between Daley Crawford and Hilda L. Bowdan. It recites that in consideration of $350 to be paid in cash that Daley Crawford agrees to sell, transfer, convey to Hilda L. Bowdan all the stock and fixtures and complete list of customers doing business with party of the first part under the trade name of Kalmia, as well as other personal property appertaining thereto and containing in premises 1307 Connecticut Avenue, Northwest, and then it lists a number of items of specific personal property.

And then it has clauses about the place is free and unencumbered.

It is signed by Daley Crawford and Hilda L. Bowdan.

Plaintiff's Exhibit No. 8 is entitled Bill of Sale, and it is a bill of sale, in consideration of $350 paid by Hilda L. Bowdan, whereby

38 Daley Crawford does sell and transfer and set over the identical property named in the contract.

* * * * * *

39 BY MR. BOARDMAN:

Q. Now, Mrs. Bowdan, if I may go back just to clear up something, these exhibits we have put in here, showing, according to us, that the corporation sold Selma's Gowns' business to you as an individual, have a blank amount as to the consideration and the amount of the note that you were to give. Do you have any memory about the amount of whether such a note was given? A. A note was given. I

40 don't remember the amount, however.

Q. You can't remember? A. No, sir, I don't remember.

Q. Was the note paid? Did you pay the note? A. Yes, sir, the note was paid.

Q. Do you have it? A. No, sir.

Q. Do you know where it is? A. It is in the records that Mr. Bowdan has in his possession.

Q. We will come to that later, about what has happened to your records. A. Yes, sir.

Q. You don't have it? A. I do not.

Q. There was a note; and you did pay it. Are you sure? A. Yes, sir.

Q. Was it a large amount or small amount? A. It was a small amount, sir.

Q. What would be your best recollection as to the approximate amount of the note? A. I would say around $200 or $250, about that .

41 I don't remember.

Q. We had gotten now to where you had purchased from Daley Crawford the business in the location where you now are. A. Yes, sir.

Q. Now, it recites here that you paid only $350 for everything. Is that correct? A. That is correct, sir.

Q. How did it happen that you got a business for so little? A. Well, there wasn't much of great value there; and they wanted to get out of business.

Q. Were they going out of business? A. They were going out of business and anxious to get out.

Q. According to this list of property you acquired, you got no stock-in-trade; you just got some fixtures? A. No; it was just good will.

Q. They had sold out their stock-in-trade? A. All the stock, practically, was sold.

Q. You wanted the location? A. That is right.

Q. And bought this equipment in order to get it; is that correct?

42 A. That is correct, sir.

Q. Then did you move your business in there? A. I moved it, yes, sir.

Q. About when? A. About a few weeks after that. I retained the upstairs until the expiration of the lease.

Q. You moved into your present place that you acquired from Daley Crawford approximately when? A. About September 1.

Q. Of 1942? A. Forty-two, yes, sir.

Q. And you have already stated you have been there ever since. A. Ever since, yes, sir.

Q. Now, since the time the corporation transferred the business to you, who has run the business? A. I have, sir.

Q. Who has hired the help? A. I have, sir.

Q. How much help have you had, starting in 1942 and giving us an approximate idea up until the time Mr. Bowdan and you separated in '51? A. Well, I started with one, and up until '51, had about eight in help.

43 Q. Are we to understand that it increased as you went along up until eight? A. Yes, sir.

Q. Did your business prosper after you bought out Daley Crawford's place? A. Yes, sir, it did.

Q. Now, who purchased the merchandise? A. I do and did.

Q. Will you give His Honor an approximate statement, as near as you can, as to the amount of your income, starting in '42 and coming up to the time that Mr. Bowdan and you separated in '51? A. Starting in '42, as well as I can remember, Your Honor, I would say starting with about $4,000 up to about 15 or 16 thousand dollars in '51.

Q. Was that a gradual increase? A. Gradual increase, yes, sir.

Q. Now, did you make income tax returns during this period? A. Yes, sir, I did.

Q. Do you have copies of those returns? A. Yes, sir, I have.

Q. Prior to '53, do you have them? A. I have -- I can tell you the ones I have, sir.

44 Q. Will you come down here and get them? A. Yes, sir.

Q. Now, Mrs. Bowdan, at my request, you have produced from your papers certain income tax returns, and the first one is for the year 1947; is that correct? A. Yes, sir.

Q. Do you have possession of the copies of your income tax returns for prior years? A. No, sir, I do not.

Q. Do you know where they are? A. Yes, sir, I do.

Q. Where are they? A. They are in Mr. Bowdan's possession.

Q. If he has them? A. If he has them, yes, sir.

Q. Now, does this correctly state your income tax return for the year 1947? A. Yes, sir.

Q. And that is in your individual name? A. Yes.

Q. For the year 1948, which is a joint return by you and your husband, does that correctly state your portion of the income? A. Yes, sir.

45 Q. And the same for 1949? A. Yes, sir.

Q. Which is a joint return. And also for 1950? A. Yes, sir.

THE COURT: Is that a joint return?

MR. BOARDMAN: Yes. That is a husband and wife return. I offer these in evidence, Your Honor.

* * * * * *

48 (Whereupon Plaintiff's Exhibits Nos. 9, 10, 11 and 12 were received in evidence.)

MR. BOARDMAN: May it please Your Honor, to try to save time, could I defer making my summary of these until after the noon recess, and I will be prepared to do it very promptly, I will go over it with Mr. Fadler, and we can agree.

THE COURT: Very well.

MR. FADLER: I would like to say, Your Honor, these are only admitted as her notes and memoranda that she is referring to, not the official records filed with the Internal Revenue Service.

THE COURT: It is not claimed that they were. I thought we could avoid her testifying if these could be received as having been prepared by her about the time the returns were filed.

MR. FADLER: Your Honor would evaluate them in that light.

THE COURT: Yes. It is limited to that purpose.

MR. FADLER: Yes, sir.

BY MR. BOARDMAN:

Q. Are these exact copies of the returns that you filed? A. Yes, sir, they are. They were prepared by Mr. Bowdan and myself; and they are exact copies, sir.

49 Q. Now, Mrs. Bowdan, we have got you in the Selma's Gowns shop, where you now are. What was Mr. Bowdan doing in 1942? A. In 1942, he was salesman for a liquor company. He had changed his position from the first place to the Middle Atlantic Distributing Company in Washington.

Q. You first testified he was with Try-Me Bottling Company? A. That is right.

Q. Then he had gone with Middle Atlantic? A. Which was a better position.

Q. Did he tell you or did you know what his income was in 1942 and on up? A. No; I did not know.

Q. You knew at the time you made these returns, didn't you, what he reported? A. Until I did see the returns.

Q. I think there came a time -- we all know, and His Honor will take judicial notice of it -- when the law was changed to permit joint return by husband and wife on a community basis. Then you made joint returns after that; is that correct? A. Yes, sir.

Q. Now, did he help you in the business, your business, Selma's
50 Gowns? A. No, sir.

Q. Did he sometimes come around there? A. Yes, he did.

Q. Did there come a time when he went into business himself? A. Yes, sir, he did.

Q. About when was that? A. In 1947.

Q. And what was that business? A. It was a wholesale wine and liquor company.

Q. Did he become the proprietor? A. Yes, sir, he did.

Q. Did you participate in that business? A. Not at all, sir, no.

Q. Did he continue in that business during the while you lived with him? A. Yes, sir, he did.

Q. As far as you know, he still does? A. Yes, sir.

Q. Were you ever a partner in that business? A. No, sir.

Q. Was he ever a partner in Selma's Gowns business conducted by you? A. No, sir.

51 Q. Did he ever account to you for any part of the money he made out of his private business? A. No, sir, he did not.

Q. Did there come a time that you and your husband opened a brokerage account for the purpose of trading in securities? A. Yes, sir, there was.

Q. Are you able to recall the approximate date when you did that?

* * * * * *

A. With Orvis Brothers.

Q. Who have a branch office in the Woodward Building? A. Yes, sir.

Q. And did you and your husband discuss that before you did it?

A. Yes, sir, we did.

Q. How did the discussion commence? By whom? Who started the conversation? A. Well, Mr. Bowdan said that he could invest money
52 and make money on it.

Q. What did he propose that you do? A. He proposed that I let him take money whenever he needed it for that account, since he had power-of-attorney to sign checks.

Q. By "that account," you mean what account? A. The Orvis Brothers account in both of our -- that belonged to both of us.

Q. Did you agree with him? A. Yes, sir, I did.

Q. That you would open such an account? A. Yes, sir, I did.

Q. And was it opened? A. Yes, sir, it was.

Q. And in whose names was it opened? A. In his name and my name.

Q. Did your husband state to you at the time he opened it whose account it would be and whose property it would be? A. Yes, sir.

Q. What did he say? A. He said that it would be money for both of us.

Q. Was there any agreement between you as to who would principally manage the account? A. Just that he did. Yes, he -- there was
53 the agreement, since he knew about stocks, and I knew nothing about it.

Q. He placed the orders to buy and sell? A. That is right. I never knew when he bought or sold or anything else.

Q. Was that agreeable to you that he should do that? A. Yes, sir.

Q. Did he sometimes consult with you? A. Very seldom. Once in a while, I would say, when anything important came up.

Q. Now, you have made reference to power-of-attorney, which we hadn't heard anything about. What do you mean by "power-of-attorney"? A. Well --

Q. Had you given your husband a power-of-attorney? A. I had, yes, sir.

Q. And what was that power-of-attorney? To do what? A. To

sign checks in any of our accounts.

Q. Bank accounts, you mean? A. Bank accounts, yes, sir.

Q. And did you have an account in connection with Selma's Gowns business? A. Yes, sir.

Q. And did you give him the power-of-attorney to sign checks on
54 that account? A. Yes, sir.

Q. And could he sign checks on any other account you had; or did you have any more? A. Well, whatever, I did have -- I don't remember -- but he could sign, yes.

Q. And did you authorize him specifically to withdraw money from your bank account to put in this brokerage account? A. Yes, sir, I did.

Q. And did he do so? A. Yes, sir, he did.

Q. Over what period of time? A. Well, I would say from '45 to '50.

Q. During the time the account was opened up until '50? A. Yes, sir.

Q. By the way, did you give him any other money to put in the brokerage account, other than what was drawn out by checks on your account? A. Yes, sir, I did.

Q. In what form did you give it to your husband? A. Well, when he said he needed it, it was drawn from savings account, from some cash that I might have had, or some bonds that I cashed in, that belonged to me, Liberty Bonds.

55 Q. The answer to my question would be you gave it to him in cash; is that what you mean? A. Cash, yes, sir.

Q. And did you keep any receipts for it or get any receipts? A. No; I wouldn't dare do that.

Q. Did you? A. No, sir.

Q. Now, did you keep any itemized record or any record at all as to the amount of money that you gave your husband to put in the brokerage account and the amount of money that he withdrew from your bank accounts on power-of-attorney he held? Did you keep any

record? A. Well, the checkbook would show the records.

* * * * * *

56 Q. Did you keep any account on which you wrote down the amount of money that you gave your husband to put in the brokerage account and the amount that he drew out in the form of checks to put in the brokerage account? A. I don't believe I did.

Q. You should know. Did you or didn't you? A. No, I didn't.

Q. Now, do you have the cancelled checks on your Selma's Gowns' account that your husband used to withdraw money to put in the brokerage account? Do you have them? A. No, I do not, Mr. Boardman.

Q. Do you know where they are, if they are in existence? A. If they are in existence, Mr. Bowdan has them.

Q. Now, without any records, are you able to give an approximation of the total amount of money that you supplied to put in this brokerage account? A. I would say about $70, 000.

* * * * * *

57 Q. Do you know whether or not your husband put his funds in that account, too? A. I don't know. I was told that he put his funds into his business.

Q. Who told you that? A. Mr. Bowdan.

Q. Now, did you and your husband discuss this brokerage account from time to time? A. Yes, we did.

Q. And did he say anything to you about who the account belonged

58 to? A. Yes, sir.

Q. What did he say? A. He said it belonged to both of us; and that we would make a lot of money.

Q. During the time that it existed, that is, from '45 up until as long as it existed, did you ever withdraw any money from the brokerage account? A. No, sir, I did not.

Q. Or any securities ? A. No, sir, I did not.

Q. During the period that you had this brokerage account, up until the time he left your home, did Mr. Bowdan give you any money

toward your support? A. No, sir, he did not.

Q. Did he give you anything toward the support of your son? A. No, sir, he did now.

Q. Did there come a time when something occurred concerning that brokerage account that involved the withdrawal of funds? Answer, yes, or, no. A. Yes, sir.

Q. When was the first you knew about that? Give me the date.

59 A. In February of 1951.

Q. What occurred at that time between you and your husband? A. I was in New York and I was told by --

Q. What were you doing in New York? A. On a buying trip, buying merchandise for my business.

Q. Yes. A. And --

Q. You can't tell what you were told; but as a result of what you learned, did you talk to your husband?

* * * * * *

A. Yes, sir.

Q. How did you have it? A. On the telephone.

* * * * * *

Q. Who called who? A. I called him.

Q. From New York to Washington? A. From New York, yes, sir.

60 Q. What did you tell him? A. I told him to sell some of the stocks because they had gone up in value.

Q. Do you remember the specific stocks that you told him to sell? A. No, I do not, sir.

Q. When you say you told him, what do you mean by that? A. I told him that the stocks had gone up, the market in general, and that now was a good time to sell them.

Q. That is, that was your recommendation? A. Yes, it was. I recommended that.

Q. On the basis of what you had learned in New York City? A. That is right.

Q. What answer did he give you to this? A. He laughed and said he had already sold them.

Q. Did he say how much -- what he had gotten? A. Yes.

Q. What did he say? A. He had sold $60,000 worth and gotten cash for that.

Q. Did he say what he had done with the cash? A. Yes, sir.

Q. What did he say? A. He put it in his business.

61 Q. That was in the telephone conversation in February 1951? A. Yes, sir.

Q. Did you have any further talk with him in that conversation? A. No, sir.

Q. When did you come back to Washington and next see your husband? A. The next day.

Q. Did you talk to him about it? A. Yes, sir.

Q. What did you say? A. I told him that he had no right to sell what belonged to me, or discuss it with me, and that half of it belonged to me.

Q. What did he say with respect to that? A. He said it was none of my business, that he could do what he wished with it.

Q. Did he then give you any part of whatever money he had gotten? A. No, sir, he did not.

Q. Did he tell you whether or not there was anything left in the account? A. No, he did not.

62 Q. Did you make an investigation? Say, yes, or, no. A. Yes, sir, I did.

Q. Where was that investigation made? A. At Orvis Brothers.

Q. As a result of that investigation, did you have a further conversation with your husband? A. Yes, I did.

Q. About when was that? A. The next day or two.

Q. That would still be in February, then, of '51? A. Yes, sir.

Q. What was the conversation you had with him on that date? Tell now what you told him and what he told you. A. I told him not to sell the rest of the --

Q. Did you tell him what you found out down at Orvis Brothers? A. Yes, sir.

Q. What did you tell him? A. I found out there was still about $9,000 at that value of that date left in the account.

Q. In the form of securities? A. In the form of securities.

Q. Yes. A. And that I wanted his promise that he would not sell
63 those because I had as much right to sell them as he did.

Q. And what did he say? A. He said -- he took an oath that he would not sell them.

Q. Now, Mrs. Bowdan, prior to this conversation that you had with your husband over the telephone from New York in February 1951, prior to that time, did you have any knowledge that your husband had withdrawn money from the brokerage account? A. No, sir, I did not.

Q. And such as you have learned about it, you have learned since; is that correct? A. Yes, sir.

Q. Did there come a time when something further developed concerning that account? A. Yes, sir.

Q. When was that, Mrs. Bowdan? A. In September 1951.

Q. What happened then? A. Mr. Bowdan had sold the rest of the securities.

Q. Did you find out something? A. Yes; I made further inquiry.

Q. At Orvis Brothers? A. At Orvis Brothers.

64 Q. As a result of what you learned, did you have a conversation with your husband? A. Yes, sir, I did. I had a conversation with Mr. Bowdan.

Q. What did you tell him? A. I told him he had broken his faithful promise.

Q. Did you tell him what you had learned at Orvis Brothers? A. Yes, sir.

Q. What was it you told him about that? A. I told him he had sold the rest of the securities without my consent or knowledge, and that he had broken his promise to me.

Q. What did he say? A. He said that it was not my business.

Q. Now, did you have any further discussion about your affairs? A. Yes, sir.

Q. What was that? Was that on that day or other days? A. We had further discussion that day, yes.

Q. What further discussion did you have that day? A. Relative to the stock.

THE COURT: What was it, is what he wants to know.

THE WITNESS: Just the fact that he had sold it without my con-
65 sent.

BY MR. BOARDMAN:

Q. And did he give you any part of what further money he got? A. No, sir, he did not.

Q. Has he ever given you any part of any of the money that was withdrawn from the brokerage account? A. No, sir.

Q. Now, did there come a time when you ceased living together? A. Yes, sir.

Q. When was that? A. September 1951, the 23rd of September, 1951.

Q. Are you sure of that date? A. Yes, sir. To the best of my memory, yes, sir.

Q. How long was that after the time you had the conversation with him about the fact that he had sold out the rest of the stocks at Orvis Brothers? A. That same day.

Q. The same day. That is what I was trying to get a while ago. A. Yes.

Q. Tell His Honor completely what happened that day. A. Yes. Well, we had the discussion about the stocks and his selling the stocks
66 without my knowledge or consent, and his breaking his promise; and he got very disturbed at that, and went upstairs. Shall I go on?

Q. Go ahead. Tell all that happened, and who was present, if anybody was. A. Yes, sir. Then about an hour later, Dr. and Mrs. Lichtman, who are my brother and sister-in-law, came to take us for a ride.

Q. Let's get which Dr. Lichtman. I believe you have two brothers that are doctors? A. Dr. Irving Lichtman.

Q. He is your brother? A. My brother.

Q. His wife's name is what? A. Irene.

Q. They came -- A. To take us for a ride; and as soon as Mr. Bowdan heard the door open, he came half way down the stairs, and he said: I want you and Irene and your mother and father to be a witness. I am leaving you today.

Q. Who was present and heard that? A. Dr. and Mrs. Lichtman and my mother and father, sir.

Q. Dr. Irving Lichtman? A. Dr. Irving Lichtman.

67 Q. What did you say in response to that? A. I was shocked. I couldn't say anything.

Q. What occurred after that? A. I was just petrified. I was there for a while --

THE COURT: What happened, he wants to know.

THE WITNESS: He went up; and we -- my brother tried to console me. I was crying and carrying on, and just overtaken; and my brother tried to console me. Then he said: Let's get a little air. And my mother and father and my brother and his wife and myself went for a little air.

BY MR. BOARDMAN:

Q. Then when you came back, what was the situation? A. When I came back about five o'clock, or six -- I am not sure -- Mr. Bowdan had left the house.

Q. Did he ever come back? A. No, sir; he did not.

Q. Has he ever lived with you since? A. No, sir.

Q. Now, you have already testified that your mother is not now living. A. That is right.

Q. Is your father living? A. Yes, sir.

Q. How old is he? A. Eighty-five.

68 Q. And is he able to come to Court to testify? A. No, sir, he is not.

Q. Were you ever present when your husband said anything in the presence of your other brother, Dr. Paul Lichtman? A. Yes.

Q. Where was that? A. He phoned Dr. Paul Lichtman, my other brother, at his home, and said --

THE COURT: You didn't hear that, did you?

THE WITNESS: I was at the house. We drove to my brother's house, on the same day.

BY MR. BOARDMAN:

Q. You were over at your brother's house when this happened? A. Yes, sir.

Q. You didn't hear your husband's voice then? A. No.

Q. You only know what your brother told you? A. That is right.

Q. You can't tell that. Now, how were you affected by all this, Mrs. Bowdan? A. I was very ill for a while; and I was humiliated and sick, because I had done so much for Mr. Bowdan.

69 Q. Did you consent to the separation? A. No, sir; I didn't know a thing about it.

Q. Did you know he was planning that? A. No, sir.

Q. How old was your boy at that time? A. My boy was eighteen.

Q. And has he had a college education? A. Yes, sir.

Q. He has passed twenty-one now, of course. A. Yes, sir.

Q. Now, during the time after your husband left and up until the time the boy was twenty-one -- by the way, when did he become twenty-one years of age? A. May 26, 1954.

Q. What education did he have during that period? A. Well, he had a college education at the University of Pennsylvania.

Q. And who paid for that? A. I would say I paid ninety-nine per cent.

Q. Who paid the other one per cent? A. If at all, Mr. Bowdan.

* * * * * *

71 Q. I show you a bunch of checks, Mrs. Bowdan, and ask you if those are your checks? A. Yes, sir.

Q. And for whose benefit were those paid? A. For my son.

Q. All of them? A. Yes, sir.

Q. And they run from September 24, 1951 to May 4, 1954; is that correct? A. Yes, sir.

Q. Those are between the dates, then, as it appears, your husband left you and the time the boy was twenty-one? A. Yes, sir.

* * * * * *

72 THE COURT: Let them be marked as a group of forty-two checks.

* * * * * *

(Whereupon the said checks were marked Plaintiff's Exhibit No. 13, for identification.)

BY MR. BAORDMAN:

Q. Now, in addition to the disbursements made by you for the benefit of your son, as shown by those checks, did you make other payments? A. Yes, sir, I did.

Q. In what form? A. In cash.

Q. Do you have any record of that? Answer, yes, or, no. A. No, sir.

Q. Who provided for his support? A. I did, sir.

Q. Has your husband since the time he left you ever given you any money for the support and education of the boy? A. No, sir.

Q. Or for yourself? A. No, sir.

73 Q. Was there a time before the boy was twenty-one that he underwent an operation? A. Yes, sir.

Q. When was that? A. In June 1952.

Q. And where was that operation performed? A. In New York, at the St. Clair Hospital.

Q. What was the total expense of medical and hospital bills? A. About $3,000.

Q. Is that included in those checks? A. No.

Q. Yes, or no? A. No, sir. Just partially. There is one or two checks there that I could find.

Q. Who paid the approximately $3,000? A. I did, sir.

Q. At the time your husband left you in September 1951, after he had gone, did you own any property of substantial value, have any money or property? A. The business.

Q. But apart from the business?

* * * * * *

74 A. No, sir, not at that time, no.

Q. Had you made profits out of your business? A. Yes, sir, I had.

Q. As will be shown by these tax returns, in part, at least? A. Yes, sir.

Q. What had happened to that money? A. Well, it had been taken from the business.

Q. And put where? A. Into Mr. Bowdan's business, or the stock brokerage, mainly.

Q. The Orvis Brothers' account? A. Orvis Brothers, yes.

75 Q. And during this period had Mr. Bowdan contributed toward any of the expenses in your home? A. No, sir; he did not.

Q. By the way, during the opening statement, we heard that your husband wanted to move somewhere. Did that ever occur? A. No, sir; he did not want to move. I was the one that wanted to move. He did not want to move. He was too comfortable there; and he was protected there.

Q. Did he ever get any place and invite you to it? A. No, sir; he did not.

Q. Did he ever suggest leaving? A. No, sir. I suggested it; but he would not move.

Q. Now, do you own some stock of a cigar corporation? What is the name of that? A. Diesel-Wiemer-Gilbert, DWG, Diesel-Wiemer Gilbert Corporation. I think it is a cigar corporation. DWG Corporation.

Q. Was it in the form of one certificate or more than one certificate? A. Originally, one certificate; and then Mr. Bowdan said he was going to buy 200 more, 100 in my name and 100 in his; but I never

received that.

76 Q. Did he do it? A. Yes, sir, he did.

Q. And that is a split, one certificate to you for a hundred shares and one to him; is that right? A. No, sir. He was to buy 200 more. He said he bought 200 more.

Q. You don't know anything about it. Do you own a certificate of stock? A. Yes, I do.

Q. For how many shares? A. A hundred shares.

Q. Mrs. Bowdan, I am not asking you about what he was going to do. I am asking you about the specific piece of property that you own. Did Mr. Bowdan own a similar certificate? A. Yes, sir.

Q. Each of you owned a hundred shares? A. Yes, sir.

Q. In whose name was your hundred shares? A. In my name.

Q. In whose name was his 100 shares? A. In his name.

Q. Do you have your certificate now? A. No, sir, I do not.

77 Q. Where is it? A. It is in Mr. Bowdan's possession.

Q. Have you ever been able to get it? A. No, sir, I have not.

Q. Now then, we have alleged in our complaint about 200 shares. I will ask you whether or not you have received any notices from the company about turning your certificate in? A. Yes, sir, I have.

Q. And for what purpose? A. To exchange it for 200 shares.

Q. Have you been able to do that? A. No, sir, I have not.

Q. That is because you don't have the certificate? A. That is right.

Q. All morning, from time to time, you said something about not having records and papers, and now the certificate, and your husband has them. How does it happen all these papers were in the possession of your husband? A. When he moved into the liquor place, his liquor business, he had a great deal of space, and he suggested that the records all be taken over there; and my accountant agreed; and all the records are over there.

Q. Were they there at the time your husband left you? A. Yes,

78 sir.

Q. Have you ever gotten any of them back? A. No, sir.

Q. Does that include any cancelled checks? A. Yes, sir.

Q. And was your certificate for a hundred shares of the cigar company stock there at the time he left? A. Yes, sir, to my knowledge.

* * * * * *

CROSS EXAMINATION

BY MR. FADLER:

Q. Mrs. Bowdan, where did you first meet the Defendant, Murray R. Bowdan? A. In New York.

Q. What were you doing at the time? A. I don't remember.

Q. Were you working at the time? A. I don't remember.

Q. You don't remember whether you had a job when you met him or not? A. It is so long ago, I just don't remember.

Q. You don't remember whether you were working or not when you met the Defendant. Now, after you were married -- and when were you married, Mrs. Bowdan? A. April 7, 1932.

79 Q. Where were you married? A. In New York City.

Q. After you married the Defendant, Murray R. Bowdan, where did you live? A. In Kew Gardens, Long Island.

Q. Were you working at that time? A. No, sir.

Q. Who paid the rent on the house? A. I had money in an account there.

THE COURT: Answer his question.

THE WITNESS: Who paid the rent? I did.

BY MR. FADLER:

Q. And you weren't working? A. No.

Q. And you can't remember whether you were working or not when you met him? A. If I think a little while, I will remember. This moment, I don't.

Q. Now, you paid the rent. Who paid for the groceries? A. I did.

Q. And you still weren't working? A. Not then, no.

Q. Now, when did you decide to come to Washington, D.C.?

80 A. When we had -- I had no money left, and Mr. Bowdan had no job.

Q. And when was that? A. In about June 1940.

Q. Did you work between the date of your marriage in 1933 to 1940? A. No, sir.

Q. How many years is that? A. Eight years.

Q. And all the time you paid the rent and grocery bill? A. Yes, sir.

Q. Did Mr. Bowdan work any? A. Yes, he did.

Q. And what did he do with the money he made? A. I never knew.

Q. But you paid the rent and the groceries? A. Yes, sir.

Q. Did you have any clothes to wear? A. No.

Q. What did you do? Didn't buy any clothes? A. No.

Q. Would you stay in the house all the time? A. I had something to wear, but I didn't buy clothes.

MR. BOARDMAN: May I instruct the witness to be more specific

81 in her answers? It is obvious she did have clothes and she knows we know it. So don't make answers like that.

THE WITNESS: He asked if I bought any clothes.

THE COURT: The next question.

BY MR. FADLER:

Q. Where did Mr. Bowdan work at this time? A. He was salesman for Bowdan and Tuman.

Q. How much money did he make? A. I don't remember.

Q. Do you have any idea? A. About 75 a week.

Q. It wasn't anything close to $15,000 a year? A. No, sir, that I knew of.

Q. What kind of business was he in up there? A. He was a salesman.

Q. And what kind of items did he handle? A. He sold wholesale dresses.

Q. Dresses? A. At wholesale, yes.

Q. That was women's clothing? A. Yes, sir.

Q. How long was he in that business while you were married to him? A. He was in and out of it. In that particular firm?

82 Q. In that business, the dress business. A. About three-quarters of the time, I would say.

Q. And the other time, what was he in, the other quarter of the time, what line of business? A. He wasn't doing anything.

* * * * * *

85 Q. * * * Now, when you first came to Washington, D.C., did you begin to look for a job at once? A. Yes, sir.

Q. As soon as you got here. And did your husband begin to look for a job? A. Yes, sir.

Q. Did he find a job, your husband? A. Yes.

Q. Where did he begin to work? A. Try-Me Bottling Company.

Q. How long did he work for the Try-Me Bottling Company? A. From 1940 until 1942.

86 Q. Did there come a time when he worked for the Majestic Distributing Company? A. Yes, sir.

Q. When was that? A. I don't remember.

Q. Where was he working at the time that you went into the business of Selma's Gowns? A. The first one?

Q. Yes. Where was he working? A. He was working at Try-Me Bottling Company.

Q. Did there come a time when he worked for the Mid-Atlantic Bottling Distributing Company? A. Yes, sir.

Q. When was that? A. I would say from '42 to -- or '43 -- I don't know the exact dates -- to '45.

Q. What was his salary, approximate salary while he worked there for these three companies over that period? A. Actually, sir, I never knew.

Q. You have no idea how much he made? A. Well, he started on a commission basis, which was very small, and then it increased. I don't know what the maximum was.

Q. Did there come a time when you got a job when you came down
87 here? A. Yes, sir.

Q. Where did you go to work? A. At Rosalee-Robin Shop.

Q. How much money did you make? A. About $60 a week.

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92 Q. And when did you begin working in Washington? A. In 1940.

* * * * * *

93 Q. At the time you went to work was your husband working? A. I think he was.

Q. And where was he working? A. At the Try-Me Bottling Company.

Q. When you and Mr. Bowdan purchased the corporation known as Selma's where was that business located at this time? A. 1345 Connecticut Avenue.

Q. And what were the assets of the business? A. $685. Is that what you mean, sir?

Q. No. What stock was there in this business? A. There were several chairs, racks, boxes, stationery, and a few dresses.

Q. How many dresses were there there? A. As I recall, about 20 or 25.

Q. Who signed the lease on this business to move in? A. I did. Can I go on or do you want me to stop?

Q. That's it; you have answered the question. You signed the lease on premises 1345 Connecticut Avenue? A. Yes, sir.

94 Q. I show you Exhibit No. 2, and whose signatures are attached to that document? A. This is Murray Bowdan and Selma Freedman, but this is not a lease.

Q. No, that's true; that is your Exhibit No. 2? A. Yes, sir.

Q. And what kind of document is that? What is that document? A. That is an agreement between Selma Freedman and Murray Bowdan.

Q. As to what? A. The purchase of Selma's Inc.

Q. And who bought that? A. Mr. Bowdan bought it.

Q. Is your name on that document anywhere? A. No, sir, it isn't.

Q. Do you have any other documents in your possession where your name appears where you were owner and purchaser of Selma's Inc. from Mrs. Selma Freedman?

MR. BOARDMAN: We make no contention to that effect, Your Honor. In fact, she testified that Mr. Bowdan actually did the buying.

BY MR. FADLER:

Q. Isn't it true that Mr. Bowdan owned all the stock in Selma's
95 Inc.? A. No, sir.

Q. These documents here I would like for you to -- this is Plaintiff's Exhibit No. 3, and it says "Agreement of Conveyance."

* * * * * *

Q. Is this true in this thing where it says,"Whereas the said vendor has agreed with the said purchaser for the sale to her of the entire assets of whatever kind and description of the vendor, in consideration of the sum of (blank) dollars, the said sum to be paid by the demand promissory note of the purchaser, and assumption by the purchaser of all obligations and liabilities of the vendor."

Is there a blank space in there for the consideration? A. Yes, there is.

MR. BOARDMAN: May it please Your Honor, I submit that those things all speak for themselves.

THE COURT: Yes, they do.

MR. FADLER: That is true.

96 BY MR. FADLER:

Q. Why was that space left blank? A. I don't remember.

Q. Is your signature affixed to this document? A. Yes, sir.

Q. Is that your signature? A. Yes, sir.

Q. Who did you sign that in the presence of -- this document? A. Mr. Bowdan and I guess a notary public.

Q. You guess. A. A notary public.

Q. Was a notary public there? A. Yes.

Q. A notary public was there when you signed this document? A. Yes.

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MR. FADLER: The document says it was signed in front of a notary public on the 7th day of August, 1942.

* * * * * *

97 Q. Did you actually in fact appear before a notary public on that day and sign this document? A. Yes, sir.

* * * * * *

Q. Did you give Mr. Bowdan a promissory note? A. I paid with a promissory note. That's what I said.

Q. And what was the amount of this promissory note? A. As I remember, about $200 or $250.

Q. But you don't remember what it was? A. It was either $200 or $250.

Q. Did you ever pay for the promissory note? A. Yes, I did.

Q. And how did you pay? In cash? A. No, by check, I am sure.

98 Q. And do you have that check with you? A. No, sir.

Q. When you moved to 1307 Connecticut Avenue who signed the lease for Selma's to go into 1307 Connecticut Avenue? A. Mr. Bowdan and myself. We both signed the lease. That is the rule --

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Q. You signed the lease and Mr. Bowdan signed the lease? A. Yes.

* * * * * *

Q. And what month was that you moved in there? A. 1307 you are speaking of?

Q. Yes, ma'am. A. In September or the end of August, I am not sure.

Q. I show you Plaintiff's Exhibit No. 4 which is dated --

* * * * * *

99 Q. This says "Statement of Dissolution of Selma's, Inc." It states here:

"(1) That Murray R. Bowdan is the sole stockholder of Selma's Inc., and there are no creditors of the said corporation.

"(2) That Murray R. Bowdan is the owner of all the outstanding paid-up stock of the said corporation; that the said stock ownership entitled Murray R. Bowdan to the note aforementioned in full settlement of the distribution of the aforesaid sole assets of the corporation.

And this is signed Hilda L. Bowdan.

At this time was it true Mr. Bowdan was the owner of all the stock? A. If it says so there it must be true. I don't ever remember reading that.

Q. You don't remember reading it. Did you sign it? Is this your signature? A. Yes, I signed anything Mr. Bowdan gave me to sign.

Q. What date was this document executed, do you remember? It says the 7th day of August. A. Of August?

100 Q. Of August, 1942. A. That's right.

Q. Then would you say now that Mr. Bowdan was the owner of all the stock of Selma's at this time or not? A. I wouldn't know what to say there. At that time hewas.

Q. In August, 1942, he was the owner of all the stock of the corporation? A. Yes.

Q. Was there any time you transferred that stock back to him between the buying of the corporation in February, 1942, and August 7, 1942? A. Transferred it back?

Q. You said you owned part of the stock and your mother did, and now here is a document and you just testified that he owns all the stock. Was there a transfer of some of the stock back to him? A. Not that I remember.

Q. Then isn't it true he owned all the stock from the beginning in the corporation? A. According to your papers, yes.

Q. This isn't my paper; this is Plaintiff's Exhibit No. 4. A. I mean the papers you have in your hand.

101 Q. Let me ask you this. Isn't it true that -- is this the original agreement of conveyance? A. I can't see from here.

Q. Was this document ever filed in the Recorder of Deeds office, in the Superintendent of Corporations of the District of Columbia? A. I don't know.

Q. Has there been any formal proceedings for dissolution of Selma's Inc. in the District of Columbia? A. Yes. I am sure there was.

Q. It has been dissolved in the Recorder of Deeds office? A. Yes, sir.

Q. Is this the original agreement, document of dissolution? A. Yes, sir.

Q. Has this been filed? A. I wouldn't know unless I would see it. You just asked me that -- I don't know.

Q. Isn't it true that these papers were never filed, this transaction never went through transferring Mr. Bowdan's assets to you, -- A. I beg pardon?

Q. Isn't it true that the transfer of Mr. Bowdan's interest, which was all the stock in Selma's, that that was never consummated;

102 that this was the intention to do it but it never was filed, never was recorded -- A. No, sir, that is not true.

Q. -- and according to law the corporation was never dissolved; isn't that true? A. No, it isn't true.

Q. But you don't know whether the papers were filed or not to dissolve it? A. I never handled the papers.

Q. Who handled the papers? A. Mr. Bowdan.

Q. Mr. Bowdan handled the papers? A. Mr. Bowdan handled the papers.

* * * * * *

Q. Mrs. Bowdan, where did your son live when you came here to Washington? A. 2721 Woodley Place.

Q. And that is the residence of your mother and father? A. Yes,
103 sir.

Q. You mentioned that you owed some debts in New York when you left and you mentioned that you only owed two bills, rent and grocery bills. Did you owe any other bill? A. Not that I remember.

Q. Let me ask you this. Did you owe any doctor bills? A. Yes, sir.

Q. There was a doctor's bill? A. Yes, sir.

Q. And who was that doctor's bill for? A. For my son.

Q. When you started to work at Selma's Inc. what was your salary there? A. I didn't work at Selma's Inc.

Q. At Selma Gowns. When you bought this corporation what was your salary? A. I was the owner; I didn't draw a salary immediately.

Q. How did you live? A. In 1942?

Q. Yes. A. I had earned money in the Rosalle-Robin shop.

Q. And you were living off of that? A. For a short time.

Q. Who paid the grocery bill when you and your husband lived with your parents? Who paid the grocery bill? A. I did, Mr. Fadler.

104 Q. All the time? A. Yes.

Q. Did Mr. Bowdan ever buy any groceries there? A. Not that I remember.

Q. Did he ever pay any rent? A. Rent? No, sir.

Q. He never paid any rent? A. Never.

Q. Did he ever contribute any money to the support of the child, or anything like that? A. No, sir, he did not.

Q. On this note to your parents for $500 was that ever paid back? A. Yes, it was paid back.

Q. Was the $180 or 185 ever paid back on the note to Mrs. Freedman? A. Yes, sir.

Q. And when was that $500 note paid to your parents? A. I don't believe that was a note, sir.

Q. It was a loan, wasn't it? A. It was a loan. I don't know exactly what form it was in, but it was a loan my mother made to me.

Q. And when was that paid back? A. I don't remember just when.

105 Q. A minute ago you said you took possession of 1345 Connecticut Avenue on February 12, 1942. Isn't it true that Mr. Bowdan went down there and took possession of the place? Didn't he go with you? Was he around anywhere? A. He might have been for that particular hour or so.

Q. He went down to take possession with you, didn't he? Both of you went down. A. You mean to open the place?

Q. Yes. A. Well, three of us went, if you want to know.

Q. Was Mr. Bowdan there? A. Mr. Bowdan was there.

Q. You said you ran this business all by yourself and Mr. Bowdan didn't help you run it at all, is that true? A. I said I ran it all by myself. I had a salesperson.

Q. Did Mr. Bowdan help you run it? A. No, he didn't.

Q. Did he help you at all? A. He was of no help to me.

Q. You said you made many buying trips to New York. Did you go to New York often? A. In that particular period not too often. Subsequently, often.

Q. Isn't it true that Mr. Bowdan put in from 12 to 15 hundred dollars worth of dresses in stock in that business when you first opened

106 at 1345 Connecticut Avenue? A. Not that amount, no, sir.

* * * * * *

Q. How much would you say? $1200? A. No, sir.

Q. How much would you say? A. I would say about $300.

Q. Would you say that was any help, to put in some dresses in the business to start it? A. It might have been.

Q. How did you get introduced to the buyers in New York to buy these dresses? Who introduced you around in the trade? A. I found the stationery of a buying office that Mrs. Freedman had had.

Q. That was your only contact with New York buyers? A. No, it was not, sir. I knew many people in the market.

Q. Didn't Mr. Bowdan introduce you to all the buyers in New York and show you how to buy? A. No, sir, he did not.

Q. Did Mr. Bowdan spend any time in the opening days down at
107 the business? A. He had a job and he was not in that business.

THE COURT: Answer his question.

THE WITNESS: No, sir, he didn't.

BY MR. FADLER:

Q. Did he ever come down to the business at all? A. To take me home usually.

Q. That's all he came down for, just to take you home? A. And maybe in the evenings.

Q. And what did he do in the evenings? A. Unpack some packages.

Q. Was that of any help? A. Yes, sir, I would say it was.

Q. What else did he do? A. Just odd things.

Q. Like what? A. Hang up clothes.

Q. Was that of any help? A. Yes.

Q. Who kept the books and the minutes of the corporation? A. I had a bookkeeper, a clerk who was a bookkeeper and saleslady.

The minutes of the corporation were kept by an accountant.

108 Q. And who was your accountant? A. Mr. Sherman was my accountant.

Q. What is his first name? A. Albert Sherman.

Q. And where is his office? A. I don't know where it is now.

Q. And how long was he your bookkeeper for this business? A. For many years.

Q. Is he your present bookkeeper? A. No, sir.

Q. When did he discontinue being your bookkeeper? A. I don't know the year.

Q. Who is your present bookkeeper-accountant? A. Bookkeeper or accountant?

Q. Accountant. A. Mr. Alexander and Mr. Friedlander.

Q. What is Mr. Alexander's first name? A. Edward Alexander.

Q. Does he have a middle initial? A. I don't remember.

Q. And where is his office? A. He is with Mr. Friedlander. They are combined.

Q. And where is Mr. Friedlander's office? A. 17th and K or 17th and Connecticut.

109 Q. When this purported transfer went through here you don't remember ever paying any recording fees or anything like that to record these papers? A. I am sure fees were paid. If you ask me if I remember how much or when, I couldn't tell you. When you have a notary public sign a paper you have to pay them.

Q. But you would not testify under oath that these papers were filed in the Recorder of Deeds office to liquidate this corporation, would you? A. You mean if I filed it? I could only swear if I filed them myself, and I did not.

Q. You do not know whether they have been filed or not, is that correct? A. No, I don't know. I am sure they were filed by the accountant. I did not file them.

Q. Who was president of this corporation when it was formed in 1942, February 12, 1942? A. Who was present?

Q. Who was president of the corporation that you bought? A. President?

Q. After you purchased it, and Mr. Bowdan purchased it, who was the president of it? A. I think I was the president.

Q. Is there any doubt in your mind? A. No, sir.

110 Q. Is it carried on the minute book that you were elected President? A. I don't have the minute book.

Q. You don't know whether you were or not then, do you? A. I was the president.

Q. Do you remember attending any meeting when you were elected president? A. Yes, sir.

Q. And where was that meeting? A. At 1345 Connecticut.

Q. And who was present besides yourself? A. My mother, Mr. Bowdan, and an attorney, I don't remember.

Q. What was the attorney's name? A. I don't remember.

Q. Was it Mr. Joseph Bulman? A. Yes, sir.

* * * * * *

111 Q. Why did Mr. Bowdan, if Mr. Bowdan had transferred all his interest which he owned, all of the stock and transferred it all over to you on August 7th, why in the last of September did he go down and sign the lease for the new business? A. I asked him to.

Q. Why? A. I was busy. I was working and I asked him to go down, and they required the husband and wife to sign the lease.

Q. When you bought out this stock here, this merchandise, from Crawford, as shown in Plaintiff's Exhibit No. 2, where did the $350 come from to pay for this merchandise and equipment? A. Out of my account, my own account.

Q. And whose money was that in that account? A. Hilda L. Bowdan.

Q. Isn't it true that the account from Selma's Gowns was in the name of both yourself and your husband? A. There was another account.

MR. BOARDMAN: Answer the question.

THE WITNESS: No, there was not.

BY MR. FADLER:

Q. Selma's Gowns account was only in your name. Was that from

112 the beginning of business on February 12, 1942? A. Will you ask the question again, please?

Q. From February 12, 1942, until the present whose name was Selma's Gowns account in, your name only or you and your husband? A. I don't remember that.

Q. You don't know that? A. I don't remember it, no.

Q. What banks did Selma's have their acount in from February 12, 1942, after you took over the business, until the present? A. I believe it was the Hamilton National Bank.

Q. Did you have it in any other bank? Is that the only bank account you had? A. I might have had one in the Lincoln National Bank. I don't remember if it was at that time.

Q. Those two. And at all times this was just in your name. A. I didn't say that. I said I didn't remember. However, I do --

THE COURT: Now, wait. She has answered; she said she doesn't remember.

BY MR. FADLER:

Q. You mentioned a share of stock a minute ago in this D. W. G. Cigar Corporation. Who paid for those 100 shares of stock? A. I did.

113 Q. And how did you pay for it? A. I don't remember, sir; that's long ago.

Q. And when were they purchased? A. About 18 or 20 years ago.

Q. Would you say 1940? A. No, sir, 1940.

Q. 1942? A. No. It was prior to that.

Q. Would you say 1938? A. Prior to that.

Q. And where were you living at the time? A. In New York City.

Q. And were you working and employed in 1938? A. No, sir.

Q. And how much did you pay for this stock at that time? A. I don't remember, sir.

Q. But yet you purchased it? A. Yes, sir.

Q. Do you remember how you paid for it? A. No, I don't.

Q. Have you ever been over at the office of Orvis Brothers?

114 A. Yes, sir.

Q. When was the last time you were over there? A. In September, 1951.

Q. Were you ever over there prior to that time? A. Yes, sir.

Q. When is the first time you went to Orvis Brothers? A. I don't remember that, but I remember the time prior to the last time.

Q. How many times in all have you been over there? A. About four times.

Q. Four times? A. Yes.

Q. When was that account opened at Orvis Brothers? A. 1945, or thereabouts.

Q. Did you go over there at that time when it was opened? A. No, sir.

Q. What is your compensation that you take from the business of Selmas's Gowns? How much money have you drawn from Selma's Gowns approximately per year from 1942 to the present? A. From 1942?

Well, a great deal. I would have to add it up.

Q. Just approximately. How much a year do you take out a year for salary? A. Would that be profit over the years?

115 Q. Income. A. Income?

Q. How much of your income do you derive from Selma's Gowns since 1942? A. I can't tell you exactly. I could tell you approximately but I couldn't tell you exactly.

Q. Approximately. A. Until today, you mean?

Q. Yes. A. From 1942?

Q. Yes. A. That's fourteen years.

Q. That is per year. Just how much a year. A. Oh, per year? I couldn't tell you per year because it varied.

Q. How much did you take out as income from Selma's Gowns in 1942? A. In 1942 about $5,000 or $6,000.

Q. How much in 1943? A. I would say $10,000.

Q. And how much in 1944? A. I can't tell you exactly.

Q. Just approximately to the best of your recollection? A. About $15,000.

116 Q. Fifteen? And how much did you derive in 1945? A. I would say about the same amount.

Q. About $15,000? A. About.

Q. How much in 1946? A. About $16,000. May I say that it steadily increased?

Q. Yes. A. I can't remember.

Q. Let me draw your attention then to 1951? What did it increase to in 1951 about the time that you and your husband separated? A. To about $18,000. That was afterward.

Q. You said he left in September. A. In September? I can't tell you accurately.

Q. Between September, 1951 -- A. May I go back to that?

Q. Surely. A. I think it was 1952 that was about $18,000.

Q. 1952, the last year. A. I think 1951 was about $14,000, but these are approximate figures.

Q. And in 1952 it was $18,000?

Now, let's take the year 1953, 1954, and 1955, last year, what was your personal income from the store at that time for 1953, 1954,

117 and 1955? A. I can remember 1955.

Q. All right, 1955 then. A. It was $22,000-something.

* * * * * *

119 Q. I would like to direct your attention to Orvis Brothers, this account. Isn't it true that you mentioned to your husband on several occasions and asked him to close out the account in 1951? A. No, sir.

Q. You didn't want him to sell the stock in 1951? A. Now you asked me one question and now you want me to answer something else.

Q. I wish you would answer it. Did you or did you not ask your husband to close out and sell all the stock in Orvis Brothers account in 1951? A. No, sir, I did not.

Q. Do you feel that within the last ten years living in Washington

120 that you have ever been deprived of anything in the way of food, clothing, shelter for you, yourself, and your son? A. Deprived?

Q. Yes. A. No.

Q. You have never had to do without, have you, economically? A. Not since I am in Washington, that's for sure.

Q. Who has cooked the meals since 1942 up to 1951 where you and your husband were living? A. A maid or my mother.

Q. Did you ever cook any meals there? A. Yes, sir.

Q. How many would you say you have cooked or prepared for your husband? A. Many.

Q. Did he ever go out socially with you? A. Yes, sir.

Q. What is your health condition at the present time, Mrs. Bowdan. A. I would say good.

Q. What was your health condition at the time you came to Washington in 1942? A. Harrassed.

121 Q. It was what? A. Harrassed.

Q. Your health condition was harrassed? A. Yes, aggravated.

Q. And what was the aggravation. A. Due to Mr. Bowdan's tongue lashing and brain washing tactics.

Q. What do you mean by "brain washing tactics?" A. Well, Mr. Bowdan is a very dominating man, and everyone has to bow to him, and he made me and my son subservient to him. He called us the most unique names in the language, in the American language, and he made, tried to make my child insecure.

He is a Dr. Jeckyll and Mr. Hyde. On the outside he is a very wonderful person, but at home he is a devil. That is what I meant by harrassed.

Q. Have you been in a nervous state, directing your attention to around 1950 and 1951? A. Nervous?

Q. What about your nervous condition? A. I should say I am on my two feet all the time; I had to be to support him the way he wanted to be supported.

Q. Did you ever tell him to get out of the house? A. No, sir.

Q. Since September, 1951, to the present, how many times have
122 you called him and asked him to come back? A. Called him? I didn't call him.

Q. Did you ever try to communicate with him? A. I did not, no.

Q. Did he ever try to communicate with you? A. No, sir.

Q. He never called you once and asked if he could come back? A. No, sir.

Q. If he had ever called and asked to come back would you let him come back?

MR. BOARDMAN: Objection.

THE COURT: Sustained.

BY MR. FADLER:

Q. Is there any chance of reconciliation between you and him at this time? A. No, sir.

Q. And why is that?

MR. BOARDMAN: May it please Your Honor, I object. If she has a cause of action after two years desertion it becomes immaterial.

MR. FADLER: I think that is an appropriate question for the court as to whether or not there is any chance for reconciliation, and I would like to ask for the reason why not.

123 After all we are charging this man with desertion and he is denying it.

THE COURT: She does say that there is no chance, I think it should stop there.

BY MR. FADLER:

Q. And you said you never ordered him out of the house, is that correct? A. That is correct.

Q. Did anyone ever hear you order him out of the house? A. No, sir.

Q. Do you have a personal bank account at this time? A. Yes, sir.

Q. What is the balance in that account? A. I would say about $3,000, or less; I am not sure, but about.

Q. What is the gross business done by Selma's Inc. at this time? A. Selma's Inc.?

Q. Selma's Gowns, the business that you purport to own.

A. Approximately $300,000.

Q. $300,000 a year gross business? A. Yes, sir.

Q. And what was the approximate gross business when the business

124 was first purchased in February, on February 12, 1942? A. I don't remember, but the records show it.

Q. What would you say, about? $10,000 a year? A. I don't remember.

Q. What was the gross business that Selma's was doing in 1951 on or about September or October, 1951? A. I don't remember that, but the records are there.

Q. Would you say $200,000? A. Yes, I am sure it was that much.

Q. At least that much? Wasn't it true that you helped Mr. Bowdan start the business known as Murray R. Bowdan Distributing Company? You helped him start that, didn't you? A. No, sir.

Q. Did you want him to start the business? A. He wanted to.

Q. Do you feel that you are a partner in that business? A. He never made me a partner. I am not a partner.

Q. Do you feel like you own any part of that business? A. No, sir, I do not.

Q. Isn't it true that when this account was closed with the Orvis Brothers that there was about $33,000 and you told him that he could have that to put in his business and develop his business? A. Definitely
125 not.

Q. Isn't it true that you and your mother both were on Mr. Bowdan time and time again to close out that account? A. Mr. Fadler, that's the one --

THE COURT: No, answer the question.

A. No, sir, never.

MR. FADLER: Your Honor, I think that is all the questions I have at this time. I want to call her back as our witness later on.

THE COURT: Yes.

MR. BOARDMAN: May it please your Honor, I wonder if it be permitted before I put her on redirect, which will be short, to take her down and even have her leave the room, if desired, and let me put on her two brothers, one of whom is a practicing physician and the other is a dentist. They have to arrange their appointments.

THE COURT: Mr. Fadler, is that agreeable to you?

MR. FADLER: Yes, Your Honor.

THE COURT: That may be done.

* * * * * *

126 DR. IRVING S. LICHTMAN

was called as a witness by the plaintiff and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOARDMAN:

* * * * * *

Q. Where do you live? A. I live at 3001 Davenport Street in Washington.

Q. What is your occupation? A. I am a dentist.

Q. Are you related to Mrs. Bowdan, the plaintiff in this case? A. Yes.

Q. In what manner are you related? A. She is my sister.

Q. You of course are acquainted with her husband, Murray Bowdan? A. Yes, I am.

Q. And their son, Newton? A. Yes, I am.

127 Q. Do you have personal knowledge of the time they separated, Mr. and Mrs. Bowdan? A. Yes, I do.

Q. And were you present on any occasion when something occurred with respect to that? A. I was.

Q. Will you first state the approximate date as nearly as you can recall when this was? A. This was the end of September on a Sunday, in 1951.

Q. And where did it occur, sir? A. At the home of my parents.

Q. At what address? A. 2721 Woodley Place, Northwest.

Q. And on that date did you overhear anything said between the Bowdans or by either of them concerning their living together? Answer Yes or No. A. Yes.

Q. Tell his Honor just what you heard, the entire conversation and tell what happened. Frist, let's have what time of day it was? A. It was mid-afternoon on this particular Sunday. My wife and I arrived, as was our custom, to take my parents for a drive, and as we entered the home of my parents and my sister and brother-in-law he was standing -- Mr. Bowdan was standing on the steps, and he stated that

128 he wanted my wife and I to be witnesses, and my mother and father too, to be witnesses to the fact that he was leaving my sister.

Q. Was your sister there at the time he said that? A. She was.

Q. And then what happened, if anything? A. The recovery from the shock of this event was rather slow.

Q. Recovery of whom, sir? A. My own, my sister, and the family generally, I presume.

Q. Just tell what happened, that's the best way. A. I took my sister and my wife and my parents for a drive.

Q. What was your sister, Mrs. Bowdan's condition at that time? A. I can best describe it as being completely startled and stunned by the announcement.

Q. How long were you away on the drive, sir? A. The drive was not a long one, perhaps an hour.

Q. Did you go anywhere, to anyone else's home? A. Yes, we did.

Q. Where did you go, sir? A. To my brother's home.

129 Q. Then did you return to Mrs. Bowdan's home, to your parents' home? A. I took my -- yes, we did.

Q. And was Mr. Bowdan there when you returned? A. He was not.

Q. Thereafter did you visit in your parents' home? A. Frequently.

Q. I believe your mother died later? A. This is one of the methods that makes me recall the event. My mother died April of the following year.

Q. And your father still lives there, I believe? A. Yes, he does.

Q. Quite old? A. Yes.

Q. And you visit there, do you? A. Frequently.

Q. And to your personal knowledge, have you any personal knowledge that Mr. Bowdan has ever lived there with your sister since the occurrence you have told us about? A. He has not lived there.

* * * * * *

CROSS EXAMINATION

BY MR. FADLER:

* * * * * *

130 Q. The incident that you referred to before, what was the date of that incident? A. It was the last or near the last Sunday in the month

of September, and I date this from the Jewish holiday occurrence at this time. It was immediately preceding the Jewish holidays. I would say that it was either the 23rd, perhaps, or the 30th of September.

131 Q. And what year was that, 1950? A. 1951.

Q. And where was this? Where did it take place? A. In the home of my parents.

Q. Did you visit them there very often? A. Very often.

Q. And when you visited them there in the home how did you find their domestic life? A. It was rarely tranquil.

Q. Did you ever suggest to your sister and your brother-in-law that they move from the house of your parents? A. After their separation.

Q. And you suggested what after their separation? A. That perhaps it might be advisable for them to establish a domicile of their own.

Q. And why did you suggest that? A. I was anxious to preserve the well-being of my sister.

* * * * * *

132 Q. Do you think it would be better for the well-being of your sister and your brother-in-law, after their separation, if they would have gotten a house somewhere other than the home of your parents? A. I don't think that is what I said exactly. The objective was to have them live as a family unit in my mind's eye.

Q. How long did Mr. Murray Bowdan live in the house after this incident? A. After which incident?

Q. The one you just related about the drive and coming home. A. He never appeared there again.

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133 DR. PAUL LICHTMAN

was called as a witness by the plaintiff and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOARDMAN:

* * * * * *

Q. Where do you reside? A. At 4320 - 45th Street, Northwest.

Q. What is your profession, sir? A. I am a physician.

Q. Are you engaged in the general practice of medicine? A. No, sir, I do heart work.

Q. What relation are you to Mrs. Bowdan, the plaintiff in this case? A. I am her brother.

Q. And you of course are acquainted with her husband, Mr. Murray Bowdan? A. Yes, I am.

Q. Do you have knowledge of the time that they lived in the home of your parents for some considerable time? A. Yes, I did.

Q. Did you visit them there? A. Yes, I did.

134 Q. Do you have knowledge of the time your sister and her husband ceased to live together? A. Yes, I do.

Q. And did you have any conversation with the defendant Murray Bowdan at or around the time that the separation occurred? A. A phone conversation.

Q. With Murray Bowdan? A. That's right.

Q. And where were you at the time of the conversation? A. In my home.

Q. Are you able to fix the approximate date of this occurrence, Doctor? A. Yes, approximately.

Q. When was it? A. It was in 1951, and in September, one Sunday the latter end of September.

Q. You are not certain as to the precise Sunday? A. No, I am not.

Q. Did you call Mr. Bowdan or did he call you? A. He called me.

Q. Who was present in your home at the time this call came in? A. I can't say for certain.

135 Q. Was your sister, Mrs. Bowdan, there or not? A. No.

Q. State what the conversation was with Mr. Bowdan on that occasion. A. I can't give you the complete conversation. I can give

the most outstanding thing that I do remember. Mr. Bowdan told me he was leaving my sister.

Q. Is that about all that was said? A. No; I am sure there was more said but that was the important thing that sticks in my memory. I can't remember any other significant thing that was said.

Q. Did you have any conversation about any stocks and bonds? A. Not at all.

Q. Did you visit in your parents home after that, Doctor, after this phone call? A. Not on that day, not that I recall.

Q. Did you at any time in the future? A. Oh, certainly.

Q. Did you visit there frequently? A. Very frequently.

Q. And I presume you still do, is that correct? A. Yes, sir.

Q. And to your knowledge did you ever see Mr. Murray Bowdan there after the time he told you that he was leaving? A. No, sir, I did
136 not see him there after that time.

Q. And did your sister and her son continue to live there? A. Yes, they did.

Q. We understand here that since then your mother has died, is that correct, Doctor? A. Yes, that is correct.

Q. And your father is still living? A. That's right.

Q. How old is he? A. 85.

MR. BOARDMAN: May it please Your Honor, Mr. Fadler on behalf of the defendant subpoenaed the old gentleman as their witness.

This case was up a week ago today before another judge and was not reached. I would like to inquire here as to the physical possibility of him appearing, if Mr. Fadler still insists upon exercising the power of subpoena. If you don't, Mr. Fadler, I have no further questions to ask.

MR. FADLER: I don't know -- I just thought that Mr. Lichtman lived in the house there and he would know more about this situation than anybody, and if he does visit and come out he might not mind coming down and telling the Court.

Of course if the gentleman is ill we certainly don't want to jeopardize

his health, but if he would be able to come down and tell the Judge, I
137 know none of us feel too good but we wouldn't want to jeopardize his health.

MR. BOARDMAN: Well, Mr. Fadler doesn't state that he doesn't seek to enforce --

MR. FADLER: No, I think I would want him to come down. If there is any reason he shouldn't come down, we don't want him to come down.

MR. BOARDMAN: I had better ask the doctor about it then.

BY MR. BOARDMAN:

Q. Are you acquainted with your father's physical condition? A. I am his physician.

Q. And with his condition of health? A. I am his physician.

Q. Is he able -- in your opinion would it be safe for him to come to court and testify as a witness? A. I feel very reluctant to have him do so. He has had three myocardia infarctions; he has significant coronary disease and moderate heart failure.

The physical exertion involved I don't think would be too important, but I think the tension factors involved might possibly cause some worsening of his condition. In fact I have written a letter prior to the last meeting of the Court.

138 Q. Yes, but you must testify here what your opinion is, rather than the letter. A. I feel that it would be unwise for him to appear in court.

Q. Do you think it would be safe? A. That's a very difficult question to answer, but generally speaking I know it would distrub his condition.

MR. BOARDMAN: Thank you.

MR. FADLER: Well, in view of that, of course we will excuse him.

THE WITNESS: Thank you.

BY MR. BOARDMAN:

Q. You said he was how old? A. 85.

CROSS EXAMINATION

BY MR. FADLER:

Q. Doctor, are you also the physician for treating your sister, Hilda L. Bowdan, the plaintiff in this case? A. That is true.

Q. And what is her condition at this time? A. As about in the past; she has rheumatic heart disease, and unless she overstrains herself she gets along fairly well.

139 Q. Isn't it true also that she is in a period of menopause, change of life, at this time? A. Well, she had been treated for that. I don't know that she is at present being bothered with that. I did not undertake such treatment.

Q. Were you treating her on September, 1951? A. Yes.

Q. And isn't it true she was in that period at that time? A. I don't think so. I don't think she was in 1951.

Q. When was it, prior to that or subsequent? A. Since then.

Q. Do you recall the time, Doctor, when Mr. Bowdan had talked over with you about purchasing a house? A. Well, there were a number of conversations. I recall a time that we discussed a change in living accommodations for Mr. and Mrs. Bowdan. This was some time after they were not living together.

Q. Did you remember anything prior to that time about a house that you had talked about?

I might try to refresh your memory. The thing that you objected to, on account you thought it was too swampy, something like that, it was in a marshy place; does that help refresh your memory. A. I can't say it isn't true, but I don't recall it.

140 Q. Do you remember any time prior to the separation about the parties talking to you about buying a house somewhere else? A. No, I do not.

I would like to amend that. I know there had been talk of the purchase of some other place to live, but I can't remember any specific time or any specific place.

* * * * * *

HILDA L. BOWDAN,

the plaintiff, resumed the stand and testified further as follows:

REDIRECT EXAMINATION

BY MR. BOARDMAN:

Q. Mrs. Bowdan, on cross examination by Mr. Fadler, you testified that you could not remember whether you were working at the time you first met Mr. Bowdan. Is that correct, that you so testified? A. Yes,
141 sir.

* * * * * *

Q. Had you worked prior to the time you married Mr. Bowdan?
A. Yes, I did.

Q. And your answer is that you can't -- did you quit work before you married him? A. Yes, sir, I did.

Q. And we understand your answer that you can't remember whether you were still working when you first met him, is that correct? A. I was working when I first met him.

* * * * * *

Q. Had you saved any money prior to your marriage? A. Yes,
142 sir.

Q. Can you tell us approximately how much? A. About $15,000.

Q. And you had that at the time of your marriage? A. Yes, sir.

Q. On cross examination you testified that during the eight years approximately that you lived in New York after your marriage, before you came here, that you didn't buy any clothes.

MR. FADLER: Your Honor, I object to leading her and trying to recover from all this -- I don't mind good redirect examination, but leading this witness down the path, I don't believe in it.

THE COURT: I think perhaps he wants to draw her attention to some particular part of her testimony.

MR. BOARDMAN: Exactly. I am not leading. I have only repeated what she has said, as Your Honor said, to get to a particular part.

BY MR. BOARDMAN:

Q. Do you mean that literally? A. No, sir.

MR. FADLER: Your Honor, I object to that. It is just like he is cross-examining this witness. He said, You said so and so, now do you really mean that? That's not redirect examination, if Your Honor please.

143 THE COURT: Perhaps not, but I will take the answer.

THE WITNESS: Your Honor, I bought very few things, so few that I wouldn't consider them important. I had a child to support.

THE COURT: Next question, please.

BY MR. BOARDMAN:

Q. With respect to the income from Selma's Gowns, when you answered Mr. Fadler about the money that you withdrew each year he came down the line, did you mean that you drew that out for your own personal use, or was that the income? A. That was the income.

Q. I think you probably misunderstood his question. How much did you draw out for your own, that you spent yourself? A. Living?

Q. Living and that you spent for yourself? A. Just living expenses?

Q. No, I don't think he means that.

THE COURT: For your own personal use.

BY MR. BOARDMAN:

Q. How much did you draw out that you spent? A. On the average of maybe $200 a week, and besides a savings account. Would you include that?

144 Q. What became of the rest of it? A. It was in the business and in the savings, and I bought bonds.

Q. Well, did any of it go into this brokerage account? A. Well, a great part of it went into the brokerage account.

* * * * * *

OWEN NEAL CUMMINGS

was called as a witness by the plaintiff and being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOARDMAN:

* * * * * *

Q. Where are you employed? A. Orvis Brothers & Company
145 brokerage house.
146 Q. Are you employed in their Washington office? A. That's right.

Q. In what capacity? A. As cashier.

Q. And where is your office? A. 15th and H, Woodward Building.

Q. That is on the lobby floor there, I believe. A. Yes, sir.

Q. Have you appeared here for Orvis Brothers to produce certain records in response to a subspoena duces tecum, or a subpoena to produce papers? A. That is correct, sir.

Q. And have you produced certain documents as called for by that subpoena? A. Yes, sir.

THE COURT: Do you have them with you?

THE WITNESS: Yes, sir.

BY MR. BOARDMAN:

Q. Will you produce them, please. A. I have one request by my employer. He said, You have the judge request me to testify so that we can't have a suit slapped against us.

MR. FADLER: If Your Honor please, was it brought out whether or not this young man was working at Orvis Brothers in 1948 and did
147 he compile the records?

THE WITNESS: I did not compile them. I have been employed since September of last year.

MR. FADLER: I don't think that goes to the best evidence rule that they can be admitted.

THE COURT: Are these records under your control down there?

THE WITNESS: No, sir, they are not.

THE COURT: Who sent them up here?

THE WITNESS: Mr. Quarles. He is the manager of our branch office in Washington.

These records are kept in New York City. All bookeeping is done there.

THE COURT: Objection overruled.

MR. BOARDMAN: May it please Your Honor, the New York office called me, and they are very nervous about these things, afraid somebody will sue them, so will you instruct him, for their protection, to produce these records?

THE COURT: Yes. You are instructed to hand them over to the attorney.

THE WITNESS: Thank you.

BY MR. BOARDMAN:

Q. Do you have the subpoena, sir, that called for these documents?
A. It is in here.

148 MR. BOARDMAN: May it please Your Honor, this is a photostat but I will certify that it is correct, and the original of course is -- I would just assume the marshal hasn't got it back in the file yet. I can get it if there is going to be any technicality about it.

THE COURT: What is this, a subpoena?

MR. BOARDMAN: No, this is some sort of a reproduced copy, but it is the exact thing.

I issued this subpoena. If they are going to be technical the original I presume isn't back in the file yet, or is it? No, it isn't.

Any objection, sir?

MR. FADLER: Yes, I object to admitting these records, but the Judge has overruled that.

That certainly is not the subpoena.

MR. BOARDMAN: I have said it wasn't.

MR. FADLER: That is a copy.

MR. BOARDMAN: I just want to know if you want me to go down to the Marshal's office and get the original.

THE COURT: We will take a five minute recess.

MR. FADLER: No, we won't need that, Your Honor.

MR. BOARDMAN: You don't require me to go down there and

get the original?

MR. FADLER: No.

149 BY MR. BOARDMAN:

Q. Now, this calls upon Orvis Brothers to produce all your records of account with Murray R. Bowdan and/or Hilda L. Bowdan including securities, commodity, margin and cash accounts since 1945 and also all cancelled checks showing the payment of money to Murray R. Bowdan and/or Hilda L. Bowdan, or either of them, since January 1, 1950.

Are these the papers that you have produced in response to that subpoena, sir? A. Yes, sir.

Q. I call your attention to the fact, sir, that they are photostats rather than the originals, is that correct? A. That is correct.

MR. BOARDMAN: May it please Your Honor, the subpoena has not been technically complied with, in that the originals are not here, and I wish to inquire if Mr. Fadler is going to insist upon the originals or whether he will accept these photostats, which are obviously photostats of the checks and the account.

If he is going to be technical I will have to have them send the others down here, but I would think he would not put me to that trouble.

MR. FADLER: What were subpoenaed? Were the photostats subpoenaed or were the originals subpoenaed?

150 MR. BOARDMAN: No, I subpoenaed the records.

MR. FADLER: Well, there is always the danger, and there is a good reason why we have this rule of not letting the photostats come in.

THE COURT: Well, apparently what the company did was to photostat the records and send them down.

MR. FADLER: Since we are going to let this in I will withdraw the objection.

THE COURT: Very well.

BY MR. BOARDMAN:

Q. Are you familiar with the manner in which Orvis Brothers

keep their accounts? A. Yes, sir.

Q. And are these the accounts that are kept in the regular order of business? A. Yes, sir.

Q. And can you tell us there if there is one account or more than one account? A. These are arranged in one account number with different types of accounts under that, such as Cash, Margin, and Commodity.

Q. Does it in effect amount to one account? A. It in effect amounts to three separate accounts.

BY THE COURT:

Q. How many customers? A. Just the two, as joint owners of
151 the account.

Q. As to each of the three accounts? A. Yes.

BY MR. BOARDMAN:

Q. These three accounts, can you tell His Honor what the three separate accounts are? A. Yes, sir.

Q. First, let's take the first one, is that the first one, No. 1 type? A. Yes, sir.

Q. That consists of four photostat pages, and I will ask you what that is. A. That is the cash account, sir.

Q. And that is in the name of Mr. Murray R. Bowdan and/or Mrs. Hilda L. Bowdan, correct? A. Correct, sir.

Q. And on that tell us what those entries are on there, sir. A. Received 100 shares of Farnsworth --

THE COURT: The exhibit will show for itself.

MR. BOARDMAN: I think it probably would, but to me it might have to have a little explanation.

BY MR. BOARDMAN:

Q. Is that a record of all stocks bought and sold or money paid in or money paid out to the customer, is that correct? A. That is
152 correct.

Q. So this record would show all the money that was paid into the account? A. Yes, sir.

Q. And also all that was withdrawn, is that correct, sir?

A. That is correct.

Q. And the stock transactions? A. That is correct.

MR. BOARDMAN: I offer this in evidence, Your Honor, as Plaintiff's Exhibit whatever it may be.

THE COURT: And there are four sheets?

MR. BOARDMAN: There are four sheets.

THE COURT: Let the four sheets be marked as a group.

MR. BOARDMAN: That is Account No. 1315-1.

THE COURT: That will be received as Plaintiff's Exhibit No. 14.

(Orvis Brothers Account No. 1315-1 marked and received in evidence as Plaintiff's Exhibit No. 14.)

153 Q. Now, Sir, the next account bears the number 13,151-2.

A. Yes.

Q. Consisting of what, No. 13,151-2? A. Consisting of eight sheets.

Q. In the name of Mr. Murray R. Bowdan and/or Mrs. Hilda L. Bowdan? A. Yes, sir.

Q. That is shown as a margin account? A. That is right.

Q. Does it show any money deposited or any money withdrawn? A. Yes, sir.

Q. And does it show all the money that was withdrawn or paid to either Mr. or Mrs. Bowdan on that account? A. Yes, sir.

MR. BOARDMAN: I offer this in evidence as being account No. 13,151-2.

THE COURT: No. 15.

BY MR. BOARDMAN:

Q. Now, this next one that you have produced is account 1315-3 in the name of Mr. Murray R. Bowdan and consisting of one sheet. What is that, Sir? A. That is the sale of the stock short and the purchase of another to recover.

Q. That is just one transaction? A. Yes, sir.

154 Q. Is that correct? A. Yes, sir.

MR. BOARDMAN: I offer this in evidence.

THE COURT: No. 16.

BY MR. BOARDMAN:

Q. You have produced another sheet numbered account 1315-1 which is checked "commodity account", whereas the others were securities accounts, and that is in the name of Murray R. Bowdan and Hilda L. Bowdan? A. Yes.

Q. What is this? A. That consists of one. It is commodity.

Q. And this consists of what? A. Account of his sales and purchases of corn.

Q. Just a few transactions? A. Yes.

Q. Whatever remained in that was transferred to the stock account? A. That is right.

Q. No withdrawals were made from the stock account? A. No, sir.

MR. BOARDMAN: I offer those in evidence.

THE COURT: No. 17. Plaintiff's Exhibits Nos. 14, 15, 16, and 17.

155 MR. FADLER: No objection.

THE COURT: Plaintiff's Exhibits Nos. 14, 15, 16, and 17 are admitted into evidence.

(Whereupon, the documents referred to were marked Plaintiff's Exhibits Nos. 14, 15, 16, and 17, respectively, and received in evidence.)

BY MR. BOARDMAN:

Q. Now, Sir, the subpoena called upon your company to produce the cancelled checks covering the money of Mr. or Mrs. Bowdan since January 1, 1950, and in response have you produced the photostats of all these cancelled checks? A. All but one, Sir.

Q. That one is for how much? A. $303.25.

Q. And why have you not been able to trace that, sir? A. Due to lack of time.

MR. BOARDMAN: May it please your Honor, the amount is so small we make no issue about it because it is such a trivial amount compared to the rest.

Now, may it please your Honor, I offer in evidence these photostats of the cancelled checks. Each one of these separate sheets is for the back of the cancelled checks?

THE WITNESS: Yes, sir.

THE COURT: How many are there?

MR. BOARDMAN: Eleven sheets.

THE COURT: The eleven sheets may be marked as a group as
156 Exhibit No. 18.

MR. FADLER: Your Honor, since these are photostats -- this one is to the American Security and Trust Company and we have no endorsement on the back of it. I don't see any connection between it and this (indicating). Another thing, is that Murray R. Bowdan --

THE COURT: I will have to continue the case.

MR. FADLER: They sent them down from New York, your Honor, and the American Security and Trust Company has no identification on it at all your Honor.

MR. BOARDMAN: May it please your Honor, I renew the offer to include these nine that there is no objection to.

THE COURT: And you withdraw those that have been objected to?

MR. BOARDMAN: No, your Honor. I want to present each one in separate order.

THE COURT: The, the offer, as amended, will be received as Plaintiff's Exhibit No. 18.

(Whereupon, the documents referred to were marked Plaintiff's Exhibit No. 18, and received in evidence.)

MR. BOARDMAN: Now, I offer in evidence, as a separate exhibit, check of Orvis Brothers and Company, dated May 10, which has been produced and I think it is admissible. It is a check made payable to

Mr. Bowdan's order.

THE COURT: This will take a new number, No. 19.

157 No. 19 will be received as part of the evidence. It will be weighed with all of the evidence.

(Whereupon, the document referred to was marked Plaintiff's Exhibit No. 19, and received in evidence.)

MR. BOARDMAN: With respect to a check of Orvis Brothers and Company, dated October 6, 1950, in the amount of $11,608.44, payable to the order of the American Security and Trust Company, with numerous stamps of endorsement that I can't decipher, I ask that that be marked for identification, your Honor.

THE COURT: It may be marked for identification.

(Whereupon the document referred to was marked for identification as Plaintiff's Exhibit No. 20.)

MR. BOARDMAN: I concede, your Honor, I will have to tie that in.

THE COURT: Yes.

MR. BOARDMAN: Now, may it please your Honor, I am well familiar with the rules that the exhibits speak for themselves, but in this particular instance, I think it would be quite helpful if I could have this witness make a transcription of the exhibits --

THE COURT: (Interposing). I think what you want to do is to have him explain what the exhibits mean. Is that it?

MR. BOARDMAN: Yes, in a certain sense. I will tell your Honor briefly what I want to ask him. I want to ask him to look at all of these four accounts and ask him if there is anywhere on there, if according to their records, there was any money paid into or deposited

158 into any of these accounts subsequent to January 1, 1950.

THE COURT: Is there any objection?

MR. FADLER: I just wondered if this young man is competent to state that.

You are the cashier?

THE WITNESS: That is right.

BY MR. BOARDMAN:

Q. Can you look at these an tell us if there was any money paid in after a certain date? A. Yes.

THE COURT: Is that November?

MR. FADLER: Your Honor, we are willing to let him go into it.

THE COURT: Yes.

BY MR. BOARDMAN:

Q. Now, this copy of these accounts scheduled, will you look through there -- suppose you look through the 1950, and be prepared to testify whether or not any money was paid into Orvis Brothers on any account after January 1, 1950?

MR. BOARDMAN: Would your Honor excuse me a few moments to leave the room while he is looking?

THE COURT: Yes, certainly.

BY MR. BOARDMAN:

Q. Now, Sir, have you completed your examination of four accounts
159 with respect to any deposits made subsequent to January 1, 1950? A. Yes, sir.

Q. Have you found any such deposits? A. Yes, sir.

Q. How many? A. Two.

Q. Will you identify with respect to the account, as to the date and the amount? A. In the account 1315, type 2, on July 6, 1951, there was a deposit in our Washington Branch of $600.00. This is a margin account, and also November 22, 1950, in account No. 1315 Type 1, which is the commodity account, there was a deposit of $600.00. That is the only two.

Q. Those records do not show who made the deposits? A. No, sir.

Q. But it indicates that was money paid into the account. Is that right? A. Yes, sir.

Q. From your knowledge of this account, or if you don't have it, have you by examination of these two checks that have been produced here,

which have either been marked "Received in Evidence" -- one has been marked for identification -- do those checks which you have produced, plus that one for something over $300.00 which you can't find, does that represent all of the withdrawals from those four accounts since

160 January 1, 1950? A. Yes, sir.

Q. State whether or not the transactions, the last of them closed the account out? A. Yes, sir.

MR. BOARDMAN: That is all. Excuse me, since these are photostats they may be kept here.

THE COURT: Mr. Fadler, can you indicate how much time you may want on this witness?

MR. FADLER: I would say two or three questions, about five minutes, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. FADLER:

Q. Can you explain these sheets to us? We would like to have you indicate how much money was put into this whole account, or three accounts, everything that Murray R. Bowdan and Hilda L. Bowdan put in, how much money was put into it? A. I would have to add that up.

MR. FADLER: That is right. I don't see how you could figure it here.

MR. BOARDMAN: I understand from that your question requires for him to go back to the beginning, whereas I had him only to date, beginning January 1, 1950.

MR. FADLER: That would be the best thing, your Honor. I didn't know that --

161 THE COURT: (Interposing). You are asking for a computation from January 1, 1950?

MR. BOARDMAN: Yes, I asked for that, but Mr. Fadler is going back to the beginning.

THE COURT: On cross examination you only asked beginning January 1, 1950, isn't that right?

MR. FADLER: Yes, that is true, your Honor, but I would like to know all about this account. We would have to have an expert here to tell us and to explain this.

THE COURT: But you were talking about the amount put in?

MR. FADLER: Yes, sir.

THE COURT: You only want him to go back to January 1, 1950?

MR. FADLER: Yes. When was this account opened.

THE COURT: 1947, I believe.

MR. BOARDMAN: 1946.

THE COURT: Well, Mr. Boardman.

MR. BOARDMAN: The record, as it now stands, the witness on direct examination has testified as to all of the money put in as of January 1, 1950, which your Honor saw was two $600.00 items. He has also testified that these checks represented the total withdrawals since January 1, 1950.

If I understand Mr. Fadler, he wants to go back to 1946.

THE COURT: Do you want him to go back to the beginning and tell us how much money was put in? Is that what you want?

162 MR. FADLER: I don't think he can properly evaluate the whole account.

THE COURT: That is what you want?

MR. FADLER: Yes, sir.

THE COURT: Overnight he could take this and come back?

MR. BOARDMAN: Well, he could do the whole thing, show both the money paid in and the money withdrawn. He can do both at the same time.

THE WITNESS: There are going to be some stocks to be evaluated.

MR. BOARDMAN: You can be prepared to state them?

THE COURT: Would you happen to know --

MR. FADLER: (Interposing). Your Honor, in order to facilitate this could I have a conference with counsel for just a moment?

THE COURT: Certainly, you may.

MR. FADLER: Your Honor, I think we will just take from January 1, 1950.

MR. BOARDMAN: January 1, 1950?

MR. FADLER: So, your Honor, we won't have to go into the rest of that.

THE COURT: You want this witness overnight to give you the amount of money that was paid into these accounts since January 1, 1950?

MR. BOARDMAN: He has already done that.

163 MR. FADLER: He has already given us that. I think I will withdraw the request I made. He has said since January 1, 1950, two $600.00 deposits were made. Is that correct?

MR. BOARDMAN: That is right, and the withdrawals are these checks, plus the $300.00, and that clears the account. Now everything is in the record.

BY MR. FADLER:

Q. Then, the account was closed on what date? A. I can only give you an approximation on that. The last transfer from the cash account to the margin account was September 6, 1949, when all money went into the margin account.

Q. That means the cash account was closed in 1949? That is right? A. No, sir. I am sorry. Here is an entry of 1951, about from April 19th to September 16th. Between there were six transfers.

MR. BOARDMAN: When was that closed out?

THE WITNESS: September 6th. I am sorry. That was right at September 6, 1951.

BY MR. FADLER:

Q. That was the cash account? A. 1951. That was the cash account; yes, sir.

Q. When was the margin account closed out? A. December 12, 1951.

THE COURT: The commodity account. Do you want to know about that?

164 BY MR. FADLER:

Q. Yes. When was the commodity account closed? A. January 10,

1951. That was transferred to the stock account.

Q. The cash account was closed at September 6, 1951? A. The last payment was a transfer to the margin account of $294.00 credit.

Q. The margin account was closed out December 12, 1950? A. Yes.

Q. How was that closed out? What was the balance in it at that time? A. There was $127.35 credit when the last check was taken out.

Q. What about the commodities? That was closed January 10, 1951? A. January 10th, 1951, yes. The money was transferred to the stock account.

Q. That was a transfer to the margin account? A. It says stock account.

Q. When was the stock account closed? A. Both the margin and the cash are stock accounts. I will see if I can find the transfer of funds here.

MR. FADLER: I am sorry. I am kind of ignorant in this field. I have never been in the stock market.

MR. BOARDMAN: We are going to have this testimony transcribed over night so that we can turn back to anything that we need to.

165 THE WITNESS: It was a transfer to the margin account.

BY MR. FADLER:

Q. What is the date, actually? A. January, 1950.

Q. 1951? A. 1950, the amount of $1,164.00

* * * * * *

169 IRENE K. LICHTMAN,

was called as a witness by the plaintiff and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOARDMAN:

* * * * *

Q. Are you the wife of Dr. Irving Lichtman who testified here yesterday? A. Yes, sir.

Q. You are, therefore, the sister-in-law of Mrs. Bowdan, the plaintiff? A. Yes, sir.

Q. How long have you been acquainted with her? A. Almost fifteen years.

Q. Do you know her husband, Murray R. Bowdan? A. Yes, sir.

170 Q. Do you have knowledge of the time they separated? A. Yes, I do.

Q. Can you tell us as nearly as possible when that was? A. It was on a Sunday, the latter part of September, 1951.

Q. Did you overhear any conversation between Mr. and Mrs. Bowdan concerning what he intended to do? A. Yes, I did.

Q. Where did that occur? A. At their residence, 2721 Woodley Place, Northwest.

Q. Was that the home of Mrs. Bowdan's parents? A. Yes, sir.

Q. How did you happen to be there? A. We come over on a Sunday to take them for a ride, which was our custom.

Q. To take who for a ride? A. The family.

Q. And what did you hear stated concerning a separation? A. Mr. Bowdan was standing on the stairs as we walked in and he said "I want you, Irene, Irving, Mom and Pop to be witnesses to the fact I am leaving Hilda today."

Q. Was Mrs. Hilda Bowdan there? A. Yes, sir.

171 Q. Did she say anything? A. She looked very surprised.

Q. Did she say anything? A. No.

Q. Did Mr. Bowdan say anything more? A. No.

Q. What did he do? A. We went back upstairs to get the family together and take them for a ride.

Q. What was Mrs. Bowdan's condition at that time? A. She was very upset.

Q. Did you later bring her back to the house? A. We took her over to her brother's house.

Q. Did you bring her back to her house later? A. Yes.

Q. When you got there was Mr. Bowdan there? A. No. He was gone.

Q. Have you visited in Mrs. Bowdan's home since that time? A. Yes.

Q. How frequently? A. Several times a week.

Q. Have you ever seen Mr. Bowdan there since then? A. No.

Q. Have you ever heard of him being there? A. No.

172 * * * * *

CROSS EXAMINATION

BY MR. FADLER:

Q. Mrs. Lichtman, what was Mrs. Bowdan's condition on the day of this incident that you tell us about, her physical condition? A. As I said she was very upset, very shaken by this action.

Q. Prior to that, on the morning before this incident occurred, what was her physical condition? A. She has a heart condition and she has always been under a physician's care.

Q. What physician has been treating her? A. One of them is my brother, Paul.

Q. How long has she had this heart condition? A. Well, since I have known her, I think.

Q. Had there been any other symptons, or any other physical condition, or nervous condition prior to this time that you had observed? A. No.

Q. To your knowledge had she complained of any other ailment or illness? A. Just sinus trouble, I think.

Q. Now, did you have a chance to visit the house on the Monday following this Sunday that you talked to us about? A. I would not remember

that.

173 Q. Did you go there the next Tuesday? A. I know that some time during that following week we were there. It was my custom to go by.

Q. Do you know whether or not you were there the following Monday? A. I don't remember.

Q. Were you there or not there? A. I would not have anything to go by. I would not remember.

Q. I am just asking you if you were there in the house the following Monday, or not?

THE COURT: If you know, say so. If you don't, say you do not.

THE WITNESS: I don't remember.

BY MR. FADLER:

Q. You don't remember whether you were there or not? A. No, sir.

Q. Were you there the following Tuesday? A. I don't remember, but I was there some day during that following week.

Q. But you don't know whether it was Monday or Tuesday? A. I don't remember, but I was there some day during that following week.

174 Q. But you don't know whether it was Monday or Tuesday? A. No.

Q. Had you ever heard the defendant and the plaintiff discuss buying a home and moving into it at any time? A. No.

Q. Did you ever hear the plaintiff order the defendant out of the home? A. No.

Q. Had you ever heard any discussions about stock certificates? A. No.

* * * * *

175 MR. BOARDMAN: May it please your Honor, at this time may I state to you the substance of Plaintiff's Exhibit No. 18, being certain checks?

THE COURT: Yes, you may.

MR. BOARDMAN: First of all, your Honor, there is all of these checks, constituting Plaintiff's Exhibit No. 18 which are the checks of Orvis Brothers and Company. I shall identify them in the order of their dates chronologically.

The first one is dated February 28, 1950, drawn on the Riggs National Bank of Washington, D. C., and payable to Murray R. Bowdan, in the sum of $2,000.00. It shows the endorsement of Murray R. Bowdan.

The next one is dated March 25, 1950, drawn on the Riggs National Bank of Washington, payable to Murray R. Bowdan, in the amount of $5,260.00. It is endorsed by Murray R. Bowdan.

The next one is dated August 30, 1950, drawn on the Riggs National Bank of Washington, payable to the order of Murray R. Bowdan, in the amount of $2,000.00, and is endorsed by Murray R. Bowdan.

The next one is dated September 28, 1950, drawn on the Riggs National Bank of Washington, payable to Murray R. Bowdan, in the amount of $1,365.00, and stamped on the back "For deposit only" in the Lincoln National Bank, "Murray R. Bowdan and Company."

176 MR. FADLER: What was the date of that, counsel?

MR. BOARDMAN: September 28, 1950.

THE COURT: What account did that go into?

MR. BOARDMAN: Murray R. Bowdan and Company. Incidentally, I should have called attention to the fact that some of others did too. I just announced to your Honor that they were endorsed by Mr. Bowdan.

THE COURT: That we learned yesterday, what the Bowdan Company is.

MR. BOARDMAN: I thought that came out in testimony. This is the personal liquor store of Mr. Bowdan.

THE COURT: Is that a fact?

MR. BOARDMAN: Yes. His wife testified he went into business.

THE COURT: All right. Is that your understanding, Mr. Fadler?

MR. FADLER: How was that, your Honor?

THE COURT: That his personal liquor store account is in the name of Murray R. Bowdan Company?

MR. FADLER: Yes, sir.

THE COURT: Very well.

MR. BOARDMAN: The next check in order of time is October 6, 1950, drawn on the Chase National Bank of New York City, payable to

Murray R. Bowdan in the amount of $5,000.00, and endorsed by Murray R. Bowdan.

177 MR. FADLER: If your Honor please, I would like to clarify one thing. Murray R. Bowdan is not a liquor store. It is a distributor. There is quite a difference.

THE COURT: That was my understanding. It was a distributor.

MR. BOARDMAN: And that likewise is shown further endorsed Murray R. Bowdan for deposit. Incidentally, most of the others were too. I didn't read it before.

The next check in order of time is October 7, 1950, on the Riggs National Bank of Washington, D. C., payable to Murray R. Bowdan in the amount of $10,000.00, endorsed Murray R. Bowdan and also Murray R. Bowdan Company.

The next one is dated November 13, 1950, on the Riggs National Bank of Washington, payable to Murray R. Bowdan, in the amount of $13,000.00 and endorsed by Murray R. Bowdan and also Murray R. Bowdan and Company.

The next one, your Honor, is 1951, and the date by virtue of the bank stamps, is not clear, but the stamped endorsement on the back clearly shows a date of September 7. So, I will state to your Honor it is reasonable to assume -- I think I can see the date above. It is September 6, 1951. Mr. Fadler sees that here I am having trouble.

THE COURT: Yes.

178 MR. BOARDMAN: But I am quite sure it is September 6, 1951. It bears the bank endorsement of September 7. Anyway, it is drawn on the Chase National Bank of New York City, for $5,778.52.

The next one is dated December 11, 1951 -- excuse me, there is one before. The one of September 6, 1951, is endorsed Murray R. Bowdan and stamped under that is Murray R. Bowdan and Company.

The next one is dated December 11, 1951, in the amount of $127.35 and endorsed by Murray R. Bowdan.

That is, your Honor, all of the basic facts concerning all of the checks comprising Plaintiff's Exhibit No. 18.

Your Honor will recall that there are two other checks, one of them being Plaintiff's Exhibit No. 19, which was a check that Mr. Bowdan's endorsement was said not to be his, but which was admitted in evidence, and then another one, which was marked for identification, in some fairly large amount, I think $13,000.00 and something, which has not been admitted, which you permitted us to take for the purpose of checking with the banks.

THE COURT: Have you checked the total?

MR. BOARDMAN: I have not added them. I thought I would withhold it with your Honor's approval until we have the other data. If not, I will total these.

179 That, your Honor, completes such part of the testimony as I can put in at this time.

I would like to reserve the right to produce witnesses from the American Security and Trust Company concerning the large check payable to them and also witnesses from the Lincoln National Bank.

The reason I am not prepared to do it now is that occurred late yesterday afternoon and Mr. Fogel, my associate, is now out contacting them. It will take some time to identify just what is to be brought down.

May I rest my case with the right to produce those witnesses during the day?

THE COURT: Mr. Fadler, the Court thinks the request is reasonable.

MR. FADLER: All right, your Honor.

THE COURT: So we will proceed with the defense with that understanding and reservation.

MR. BOARDMAN: I should call your Honor's attention to Plaintiff's Exhibit No. 13, which consists of forty-two checks, which your Honor will recall Mrs. Bowdan said are checks representing disbursements she made on behalf of her son after her husband left her and prior to the time he became twenty-one.

THE COURT: Have you totalled them?

MR. BOARDMAN: I have, but they were included with some others.

180 THE COURT: All right.

MR. BOARDMAN: We will total them, and I will refer to them in argument. Unlike these checks we make no particular claim about that, only she paid out substantial sums, the exact amounts we are not unduly concerned with.

THE COURT: All right.

MR. FADLER: Your Honor, I would like to point out one thing in the plaintiff's case, and that is, insofar as making out a prima facie case goes, I don't think the plaintiff has made out a prima facie case of desertion so far in this trial because, in the first place, the plaintiff has failed to show that the defendant deserted her without her wishes. They have not shown that he walked out and she wanted him to stay. As a matter of fact, she has never asked him to come back. It is quite obvious she didn't want him to come back. She showed no reason. There is no evidence in the record so far to show that there was any effort on her part to ask him to return. In fact, the whole case shows, so far, that this was an argument over money, and we know that arguments over money do not give us grounds for a case of desertion here, and since the plaintiff is not asking him to return to the domicile, and also the witnesses here on the other side are relatives in the house and I think with all this talk about this money and the stocks and the stock accounts and the arguments that went on in the family that we can look to and take the credibility of the two witnesses

181 here of the plaintiff, especially Mrs. Irene Lichtman. She has stated she never heard anything about stock certificates. So, I think we can discredit her testimony there. She said she didn't know whether she had been back in the house the day after that, or what day. I don't think the plaintiff has made out a prima facie case. Of course, we are prepared to refute all of the testimony here, but I seriously doubt that a prima facie case of desertion has been made out. These people lived together a long time before --

THE COURT: (Interposing) The motion is denied.

182 MURRAY R. BOWDAN,

the defendant, being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FADLER:

* * * * *

Q. How old were you at the time that you met the plaintiff? A. About 28.

183 Q. And where had you lived your life prior to the time you had met her? A. New York City.

Q. And what business were you engaged in at the time you met? A. Wholesale dress manufacturing business.

Q. How long had you been in that business, sir? A. About 18 to 20 years.

Q. Will you briefly tell the Court, summarize your experience prior to meeting Mrs. Bowdan, in the dress business. A. Well, to start with, we were dress manufacturers, making original merchandise. We were very successful.

Q. Who is "we," now? A. A company consisting of my brother, who is now deceased, his partner Mr. John Tooman, and myself.

We started this business and worked it up to a volume of over a million dollars per year. And all during these years I stated, about the first four or five years, my income was never less than ten to fifteen thousand dollars per year.

Q. That was up to what time? A. To about 1933.

Q. That is about the time of meeting Mrs. Bowdan? A. After I was married in 1933. I met her in about '28 and married in about '32.

184 Q. And were you continuously engaged in the dress business prior to meeting her? A. Yes, sir.

Q. What was your salary or income derived from your work at the time you met her? A. We averaged ten to twelve thousand dollars.

THE COURT: That wasn't the question. At the time you met her.

BY MR. FADLER:

Q. At the time you met her what was your -- A. Oh, over $15,000 per annum.

THE COURT: No, that isn't the question.

BY MR. FADLER:

Q. Over $15,000? A. Over $15,000.

BY THE COURT:

Q. At the time? A. Yes, sir.

BY MR. FADLER:

Q. And where was she working? A. Down here in Washington, D. C., as a buyer for a ready-to-wear store.

Q. After you were married, immediately following your marriage, did Mrs. Bowdan continue her employment? A. No, sir; never did after she was married.

185 Q. Did she seek work or try to find work? A. No, sir; no reason.

Q. What were her activities and duties at that time? A. Homewife.

Q. She was a housewife? A. Housewife.

Q. Was there any need for her to work? A. No, sir.

Q. Was she provided for as far as clothing, food, and shelter were concerned? A. Yes, sir.

Q. You heard her testify this morning that you never bought her any clothes from the time you were married while you lived in New York. Is that true or false? A. False.

Q. Did you in fact provide her with clothing? A. Yes, sir.

Q. Food? A. Yes, sir.

Q. And shelter? A. Yes, sir.

Q. And what did you provide for her in the way of clothing? How did you provide that, and what? A. Any time she wanted anything she just went out and bought it.

186 Q. And what business were you in during the time you were married and living in New York? A. From 1932 to about 1935 I was in my old, original business. Then when the depression came on in '35 --

Q. What depression do you speak of there? A. Sir?

Q. What depression do you speak of? A. Of 1929.

Q. And when did you feel the effects of that? A. In about 1934.

Q. What business were you in in that period of time? A. At that time the same original firm of Bowdan and Tooman.

Q. Did you have access to discounts on dresses in any way? A. Yes, sir.

Q. What did you do in the way of making provision for your wife in the way of clothing? A. She got anything and everything that she ever asked for from our place, or she went out and purchased merchandise.

MR. BOARDMAN: May it please Your Honor, if there is a possibility of saving time I would like to do it. We make no contention that she wasn't well supported during that period. That was brought into the case by Mr. Fadler yesterday.

187 I am stating our theory of the case in the hope that we may shorten the testimony. It is true that I brought out testimony tending to prove that at the time they left New York and came here to live, when their boy was seven or eight years old, that they had nothing at that time. My only purpose of that -- she testified he had lost his employment; my purpose of that was not to complain about his nonsupport. We make no complaint about that, at that time.

My purpose was solely to show that at the time they came here they came with nothing, and that this property that we are in litigation about has been acquired since. That was the only point. If that will help shorten this, that is our position.

BY MR. FADLER:

Q. Did there come a time when you left New York City and came to Washington, D. C. A. Yes, sir.

Q. When was that? A. In 1940.

Q. When you left New York did you owe any bills in New York City? A. No, sir.

188 Q. Did you owe any medical bills? A. Yes, sir.

Q. What bills? A. One bill for our son, to a doctor, which I later paid.

Q. Did you owe any grocery bills? A. No, sir.

Q. Any rent bills? A. No, sir.

Q. When you came here where did you reside? A. At 2721 Woodley Place.

Q. And why did you live there? A. Her parents were there. They asked us to come down, change our life, thought maybe we would get a new start.

Q. And who lived in the house besides you and Mrs. Bowdan and the boy? A. My mother-in-law and father-in-law.

Q. How long did you live in that house? A. From the day we arrived until 1951, in the latter part of the year.

Q. All the time you were there did you contribute anything to the running of the household? A. Yes, sir.

Q. In the way of paying for rent or groceries? A. Yes, sir.

189 Q. Did you furnish Mr. or Mrs. Lichtman, your mother and father-in-law with any items of clothing? A. Yes, sir.

Q. What were they? A. Practically all the new clothes that they had ever had -- new clothes since we came in '41 or '42, when I started to work and when I purchased the store and we started to get started we clothed them.

Q. When did you first get to Washington? What was that date? A. '40.

Q. Did you seek employment? A. Yes, sir.

Q. And how long were you here before you began to seek employment? A. About four weeks.

Q. And you began -- is that seeking, or begin to work? A. I started to work in about four or five weeks.

Q. Where did you begin to work? A. Try-Me Bottling Company.

Q. How long did you work for them? A. About 2 1/2 to 3 years -- about 2 1/2 years.

Q. What were your total earnings during that period of time? A. The gross amount between $7500 and $8500.

190 Q. And where did you work subsequent to that time? A. You mean later?

Q. Yes. A. The Majestic Distilling Company.

Q. Did there come a time when you purchased a business known as Selma's Incorporated? A. Yes, sir.

Q. And when was that? A. In February of 1942.

Q. I would like to show you plaintiff's Exhibit No. 2 and ask you if you can identify that? A. Yes, sir.

Q. What is this? A. This is an agreement that I purchased the entire stock of Selma Freedman, known as Selma's Gowns Incorporated.

Q. Did you have an attorney at this time? A. Yes, sir.

Q. Who was your attorney? A. Mr. Joe Bulman.

Q. Who owned the stock in this corporation? A. After the agreement?

Q. Yes; who owned the stock? A. I did.

Q. Where was the business located when you first purchased it? A. 1345 Connecticut Avenue.

191 Q. Was there a leasing agreement between the corporation and the land owner where it was located? A. Yes, sir.

Q. And who signed the lease? A. I did.

Q. Did there come a time when the business -- when you opened up did you have enough stock to operate with? A. No, sir.

Q. Where did the stock come from to operate the business? A. I furnished the first merchandise in that store.

Q. And when did you put that merchandise in there? A. The day we took over.

Q. And what merchandise did you put in there? A. Between 50 and 60 dresses.

Q. And what was the value of those dresses? A. I would say about $1200.

Q. And that was your property? A. Yes, sir.

Q. How much time did you spend in this business when it started out? A. As much time as I humanly possibly could do.

THE COURT: That isn't any answer.

BY MR. FADLER:

Q. About how many hours? A. At least six hours in a total day.

192 Q. Did you spend about six hours a day? A. Yes.

Q. Did Mrs. Bowdan put in any time on it? A. Yes, sir.

Q. And when was she there? A. All day long, during the business hours.

Q. And what were those times? A. Oh, I would say from the first time we started from about 10 to 5 or six in the afternoon, in the first place.

Q. In the corporation who was president? Who was president of the corporation at this time when you formed the corporation? A. Mrs. Bowdan was made the president.

Q. And what was your capacity? A. I was secretary, and general manager at that time.

Q. Did you have to buy new stock to go in the store? A. Yes, continuously.

Q. And where was that purchased? A. In New York City.

Q. And how important is the buying end of the business? A. Very, very important.

Q. And who was in charge of the buying? A. Mrs. Hilda Bowdan.

Q. And did she have the knowledge to go into the buying and execute the buying? A. At the time she started she was out of the market for many years, and I introduced her to one of the leading New York commission buyers, whom she still retains, who is an expert in that line.

193 Q. Did you help her with the buying? A. From time to time, yes, sir.

Q. What were your duties in the store, as general manager? What did you do in the opening days at 1345 Connecticut Avenue? A. Well, I would check in to see what was doing. If there were any alterations to be made I would see that they were taken care of. If there were any deliveries to be made I would deliver them. If there was any money from the sales I would deposit it in the bank.

I ordered new boxes, the color of the boxes; made up our own form and type of name and printing, and purchased all the supplies; doing everything in general that we had to do to help the progress of the store.

Q. Was there anything down on the first floor in this business? A. Out on the street was a showcase.

Q. A showcase? A. In which we used to display one garment.

194 Q. Did you have anything to do with that showcase? A. From time to time and on occasion I would change different garments. We wouldn't leave a garment in there too long; they would become sun-faded, or something like that.

Q. Did there come a time when you moved the business from 1345 Connecticut Avenue? A. Yes, sir.

Q. And where did you move it to? A. To 1307 Connecticut Avenue.

Q. Did that require a new lease? A. Yes, sir.

Q. Who signed that lease for the business? A. I signed it. I was the one who negotiated and obtained it.

At that time Mrs. Bowdan was away in Atlantic City and she called me and asked me if I could obtain that lease, that it would be the greatest feather in her cap, and I said, You enjoy yourself, and I will get it for you, and I did.

Q. When did you move into the new premises? A. In about 1943.

Q. Did you spend much time at the new premises? A. Yes, sir.

Q. About how many hours a day, or days a week, did you put in at the business? A. I would say again as many hours, at least six hours a day, six days a week.

195 Q. Did you ever work late at night? A. Yes, sir.

Q. And what time did you come down in the morning? A. At 9 o'clock, and a quarter of 9.

Q. And what time did Mrs. Bowdan? A. After a while I instructed Mrs. Bowdan to come down about 12 o'clock so that she would take it a little easier, because she wasn't feeling too strong, and she worked very hard, and to make it easier I suggested that she come in about 12 o'clock every day.

Q. And she wouldn't come in then until around noon. A. About that time.

Q. What were your duties with the company at this time? A. The very same thing, only in a more elaborate manner. We had more business. We had more work to do.

I would get in in the morning, receive the new merchandise, unpack it and check it in.

Whatever mail came I attended to; made up the deposits; saw that certain alterations that were ordered to get out at certain times were done.

I bought supplies and fixed up the alteration room; hired the help; saw that we got competent people in the respective departments, saleslades, bookkeeper, and did everything in general.

196 Q. How long did you continue in this capacity as general manager? A. All the time until about the end of 1951 or -- about 1951.

Q. I would like to show you plaintiff's exhibit No. 3, headed Agreement of conveyance. Will you identify this? What is that document? A. An agreement of conveyance, which was never accomplished.

Q. Is this your signature at the bottom? A. Yes, sir.

Q. Will you explain to the Court about this document? A. We talked about selling this business, but we never did.

Q. Was this document ever filed, to your knowledge? A. No, it was never filed.

Q. And I point out to you here a space where it says description of the vendor, in consideration of the sum of (blank) dollars. A. There was never any consideration of any kind, money or otherwise, ever handed over to me.

Q. And did you ever receive a note in the amount of two hundred or two hundred and fifty dollars? A. No, sir.

Q. In consideration for any of this? A. No, sir.

197 Q. Did you ever receive a check -- A. No, sir.

Q. -- or cash payment in the sum of $200 or $250? A. No, sir.

Q. At the time this was drawn up? A. No, sir.

Q. Why was this drawn up? A. There was talk of selling this.

Q. Was there any reason or purpose behind it? A. Yes, as I recall the purpose of this I believe was to dissolve the corporation to save taxes. We were advised to do so by our attorney.

Q. Was dissolution of the corporation every accomplished? A. No, sir.

Q. And to your knowledge does the corporation still exist today? A. Yes, sir.

Q. At whose indication were these papers drawn up and prepared? I will change that: Did you have an attorney at this time? A. Yes, sir.

Q. Who was your attorney? A. Mr. Joe Bulman.

Q. Who prepared those papers? A. Mr. Joe Bulman, to my knowledge.

198 Q. Where is his office? A. The Woodward Building.

Q. Did the corporation have a bank account in Washington, D. C. A. Yes, sir.

Q. And what banking institutions were they kept in? A. Lincoln National Bank.

Q. Was there any other banking institution? A. No, sir; not at that time.

Q. Let's say from the period of 1942 until 1951 where were the bank accounts location? In what bank? A. For the first several years we banked at the Lincoln National Bank, 17 and Connecticut Avenue, and several years later we opened an account in the Hamilton National Bank, Connecticut and Dupont Circle.

Q. And how was the bank account of the company listed? A. It was Murray R. and/or Hilda L. Bowdan, trading as Selma's Gowns.

MR. BOARDMAN: I move that that be stricken, Your Honor. The bank record would be the best evidence of that.

THE COURT: Sustained.

BY MR. FADLER:

Q. I would like to show you a document here, and would you please identify this? A. This is an account sheet, a statement sheet of the Lincoln National Bank, entitled Murray R. or Hilda L. Bowdan, 1307 Connecticut Avenue, Northwest.

199 Q. And what was that account for? A. Selma's Gowns.

BY THE COURT:

Q. Is that the corporation? Is that the name of the corporation? A. No, sir.

BY MR. FADLER:

Q. Was this the corporation account? A. Yes, sir.

Q. And will you please identify that sheet? A. It is the same thing, Murray R. or Hilda L. Bowdan, 1307 Connecticut Avenue, N. W.

MR. FADLER: I would like to mark these two as Defendant's Exhibit No. 1, please.

* * * * *

(Lincoln National Bank statement of account of Murray R. and Hilda L. Bowdan marked and received in evidence as Defendant's Exhibit No. 1.)

(Lincoln National Bank statement of account of Murray R. and Hilda L. Bowdan marked and received in evidence as Defendant's Exhibit No. 2.)

BY MR. FADLER:

Q. I would like to present this bank statement, this sheet. Will you please identify that? A. This is a statement of account from the Hamilton National Bank for Mr. Murray R. or Mrs. Hilda L. Bowdan, 1307 Connecticut Avenue, N. W.

200 Q. And what account was that for? A. For Selma's Gowns.

MR. FADLER: I would like to mark that defendant's exhibit.

BY THE COURT:

Q. How does it come the account wasn't in the name of the corporation? A. If I may answer you, Your Honor, we started out and purchased it --

THE COURT: No, answer my question.

THE WITNESS: I would like to.

THE COURT: Just pass it if you haven't an answer.

MR. FADLER: No. Answer the Judge's question direct.

THE WITNESS: May I have the question again?

MR. FADLER: You said you would like to. You will answer.

THE WITNESS: Yes, I sure would; I want to answer it.

THE COURT: I don't want a lot of talk; I just want the answer.

THE WITNESS: We opened the account in the name of Murray R.

and Hilda L. Bowdan, trading as Selma's Gowns. That was always the title. We were advised to dissolve the corporation, which was never accomplished, and that is the way it went through the years.

201 THE COURT: All right.

MR. BOARDMAN: I have no objection to this last tender.

THE COURT: It hasn't been tendered to my knowledge.

MR. FADLER: Yes, defendant's Exhibit No. 3.

THE COURT: Defendant's Exhibit No. 3 will be received.

(Hamilton National Bank statement of account of Murray R. and Hilda L. Bowdan marked and received in evidence as Defendant's Exhibit No. 3.)

BY MR. FADLER:

Q. Who made the deposits for the corporation between 1942 and 1951? A. I did, mainly.

Q. And where did you make these deposits? A. In the bank.

Q. And which bank, sir? A. The Lincoln National Bank at that time, or the Hamilton National Bank at that time.

Q. And who made withdrawals? A. I did or Mrs. Bowdan.

202 Q. The exhibit that I just showed you, are those evidence of funds of the corporation that went into those accounts? A. Yes, sir.

Q. And was that the corporation account? A. Yes, sir.

Q. Would you explain to His Honor the services you performed more specifically in detail, the hours you put in in the business of Selma's Gowns from 1942, the latter part, at 1307 Connecticut Avenue up until 1951? A. Well, to start with I negotiated and taught Mrs. Bowdan how to market. I merchandised the purchases and instructed her how much money to spend according to how much money we had on hand at that time. I advised her where to go. I worked with the banks. I worked with the landlord. I worked with all the help.

When we bought the downstairs place the fixtures were obsolete. I helped improve them. I fixed them myself when we didn't have enough money to buy them. I repaired them and fixed them and rebuilt them. As we grew I suggested that we build a balcony.

At my instigation we improved that business. I was there all night with the carpenter. I obtained the carpenters, made the plans, and had the balcony built. Built the basement from a cellar to a working room, an alterations room where we later employed people. I put in the system.

203 I suggested and advised the cardinal principles of the business to all the salesladies, how to conduct themselves, how to take care of the customers, and such. I suggested everything that I possibly could.

Of course at that time Mrs. Bowdan was working with me very, very close, and very, very good.

Q. Do you have any children? A. Yes, sir.

Q. And what is your child's name? A. Newton Bowdan.

Q. And where is he at present? A. A student at Columbia University.

Q. And how old is he at present? A. About 23 1/2.

* * * * *

Q. Where did your son reside during the period between 1943 and 1951? Was he in school? A. He was at Bullis Prep, Silver Spring, Maryland.

Q. And did he come home on weekends? A. Yes, sir.

204 Q. How did you spend your weekends between '43 and '51? A. Most Saturdays and Sundays I was in the store at Selma's with Mrs. Bowdan, cleaning up, preparing and making ready for the next day; preparing for advertisements, for sales, or whatever was to be done.

Q. Did you do any work in the store in the evenings? A. Yes, sir. We would go home sometimes and come back and clean up some work. On occasions when Mrs. Bowdan would be bringing back a lot of merchandise by train I would meet her at the depot, put the merchandise in the car, take it to the store, open the store and we would hang up the things so that they wouldn't be too wrinkled for the following day, and try to have it marked and ready. Mrs. Bowdan was with me at the time.

Q. How late would you work in the evenings? A. Many a time 12 and one o'clock, two o'clock, whatever it was.

Q. Before your son went to college how was he provided for? A. Very well provided; he had everything he asked for or wanted or needed.

Q. When did he begin to go to college? A. About 1951.

Q. And what college did he enter? A. The University of Pennsylvania.

205 Q. Did you ever contribute to his support at that institution? A. Yes, sir.

Q. I will show you a stack of checks here. What are those? A. Those are checks that I have given to my son Newton Bowdan.

Q. And are there endorsements on the back? A. Yes, sir.

Q. Will you look and see what those endorsements are? A. They are all endorsed by Newton Bowdan.

Q. And is that your son? A. Yes, sir.

MR. FADLER: I would like to mark these checks Defendant's Exhibit No. 4.

MR. BOARDMAN: Are you offering them in evidence now?

MR. FADLER: Yes.

MR. BOARDMAN: I object, Your Honor, on the ground they are immaterial to this case in that they are all dated 1954 and 1953, after this case was commenced and after the boy was 21 years of age.

MR. FADLER: But Your Honor it is material in that Mrs. Bowdan testified that Mr. Bowdan has never contributed anything to the boy's support, and that she has paid his way through college and paid 99 percent of the bills.

206 MR. BOARDMAN: We restricted all of our evidence and all the checks up until the boy became 21 years of age. He is an adult, and it is nobody's duty to support him.

THE COURT: How many checks are there?

MR. FADLER: There are 14.

THE COURT: They may be marked as a group and they will be identified as Defendant's Exhibit No. 4 and will be given such proper weight as they are entitled to.

(14 checks of Murray R. Bowdan marked and received in evidence as Defendant's Exhibit No. 4.)

BY MR. FADLER:

Q. I will give you another check and will you please identify this? A. This is a check that I had taken out a policy on Newton Bowdan when he was 16 years of age, and I still pay it yearly until the present date; a $5000 insurance policy.

Q. And who is this paid to? A. The Pennsylvania Mutual Life Insurance Co.

MR. FADLER: We have the policy. I would like to offer this as Defendant's Exhibit No. 5.

(Check for $77.65 payable to Pennsylvania Mutual Insurance Co. marked and received in evidence as Defendant's Exhibit No. 5.)

THE COURT: I notice in Defendant's Exhibit No. 4 a check made payable to John Taglang.

207 THE WITNESS: That was a roomer where my son was a student and paid rent. I sent it, and prior to that check I sent $50 each month to pay his rent there. That is Mr. John Taglang where he roomed in Philadelphia.

MR. BOARDMAN: You offered this one?

MR. FADLER: Yes.

MR. BOARDMAN: And the Judge hasn't ruled.

MR. FADLER: Yes; that is on the insurance policy.

MR. BOARDMAN: Mr. Fadler had offered this in evidence, Your Honor, at the time you were looking at the checks.

I object to it on the same ground I did the other. It is dated 8/13/54. I object to it on the ground it was after the boy became 21 years of age.

THE COURT: That will be Defendant's Exhibit No. 5 and it will be received, to be given the same weight or in the same manner as No. 4.

BY MR. FADLER:

Q. Did there come a time when you purchased an automobile for your son Newton Bowdan. A. Yes, sir.

Q. And what year automobile was that? A. A 1951. When he entered the University of Pennsylvania his mother and I purchased a brand

automobile for him.

208 Q. Does he have a car at this time? A. Yes, sir.

Q. And what model car does he have? A. A brand new 1955 that his mother just purchased a few months ago.

Q. A '55 what? A. Chevrolet.

Q. I give you a stack of items here. Will you please identify those? A. These are Esso credit cards which I have given my son a credit card to travel throughout America without any expense to him. He has a charge account, a credit account, and each month I receive the bills and pay them and for the last four years since the first time he has had his automobile.

Q. Have you paid these bills? A. I paid these bills, yes, sir, every month, repairing, servicing, gasoline, tires, accidents, and everything else.

Q. And for what period are these bills? A. These are 55's and 54's, and we have them from away back from the first day he went to Pennsylvania.

BY THE COURT:

Q. Yes, but what are they? A. 54's and 55's in this batch.

MR. BOARDMAN: I move to strike out about having them as far back.

THE COURT: That answer may go out.

209 BY MR. FADLER:

Q. How much do these total at this time? A. This particular batch runs to $423.

Q. Have you paid any other expenses on your son's car? A. Yes, sir.

MR. FADLER: I would like to offer these as Defendant's Exhibit No. 6.

MR. BOARDMAN: I object upon the same ground that they are expenditures made after the boy became 21.

THE COURT: Defendant's Exhibit No. 6 will be received for the same purpose as Defendant's Exhibits 4 and 5.

(Esso credit cards for 1955 and 1954 marked and received in evidence as Defendant's Exhibit No. 6)

BY MR. FADLER:

Q. How old was your boy when you bought him a 1951 Chevrolet? A. When he was 16 or 17 years of age.

Q. Did you pay any bills on that car? A. Yes, sir, all the expense and upkeep, gasoline, and running around for it.

Q. Have you continued up to the present time? A. Yes, sir.

210 BY THE COURT:

Q. Have you got the records like this? A. We don't have them with us, but I do have them.

BY MR. FADLER:

Q. Did you ever give your son any money for his support or for his expenses while in college, when he began college? A. Yes, sir.

Q. In 1951? A. Yes, sir.

Q. Other than what we have already shown? A. Yes, sir.

Q. And what was that? A. Well, when he was entering college we had his entire year's fee. Mrs. Bowdan issued that check from our business, which I consider half of it was mine, and from time to time I paid his monthly rent, his expenses, and when I went to visit him I gave him extra money, and entertained him and his friends, and when he came home the same thing.

Q. Do you hear from your son at this time? A. Yes, sir.

Q. Has he corresponded with you since he has been in college? A. Yes, sir.

211 Q. Will you please identify these? A. These are from my son.

Q. And what are the dates on these letters? A. April 25, 1956; February 23, 1956; February 10, 1956; January 6, 1956.

MR. FADLER: I know, Your Honor, that counsel for the plaintiff is going to object to the introduction of these, but it has been intimated here that defendant doesn't have an interest in his son and hasn't sent him any money or helped him out in any way, and I think when the welfare of children are concerned, and even though the boy is over 21 at this time, that it would be of interest to the Court to receive these and examine them for what they are worth.

We have been very lenient with the objections to things introduced here, and we would like to have them marked.

THE COURT: Have them marked and let the counsel get his objection made.

MR. BOARDMAN: I object on the ground that the letter which is made by someone else would be inadmissible under any circumstance, and further on the ground these are very recent and after the boy is an adult. I object, Your Honor.

THE COURT: That will be Defendant's Exhibit No. 7, and Defendant's Exhibit No. 7 will be received for the same purpose as the last few received.

212 (Letters from Newton Bowdan to Murray R. Bowdan marked and received in evidence as Defendant's Exhibit No. 7)

THE COURT: As I understand Mr. Boardman's position he thinks the importance as testimony at this time should be determined as of the time prior to their separation.

MR. BOARDMAN: Prior to the time the boy was 21, which was after the separation. I further objected that the contents of these letters are not admissible, Your Honor, because letters that somebody writes, other than the parties, are not evidentiary.

MR. FADLER: This isn't exactly somebody; this is the only sole child of these two parties, a very important individual in the case.

THE COURT: What is the purpose of offering them?

MR. FADLER: To discredit the statement of the plaintiff that the father showed very little interest in the son. This shows their relationship and they have always been close, and he has looked out for the welfare of the boy.

MR. BOARDMAN: My only contention was that he had not supported him while he was a minor, and the boy's attitude is not material.

THE COURT: The Court thinks the last objection is good. That is No. 7. Objection sustained to Defendant's Exhibit No. 7.

MR. BOARDMAN: Then they are not admitted?

213 THE COURT: They are not admitted.

BY MR. FADLER:

Q. I would like to present this to you. Will you identify this, please? A. This is a check made out to me, January 11, 1947, in the amount of $3,000.

Q. And what does that represent? A. This represents a check that I endorsed and loaned to Selma's Gowns, that I borrowed from a friend of mine when we needed some extra cash.

Q. Was it often your practice to take your own money and put it into Selma's Gowns? A. Yes, sir.

Q. What is the date of this? A. January 11, 1947.

MR. FADLER: I would like to offer this in evidence and mark it as Defendant's Exhibit No. 8.

MR. BOARDMAN: No objection to it being admitted, Your Honor.

THE COURT: Defendant's Exhibit No. 8 will be received.

(Check dated January 11, 1947, for $3,000 marked and received in evidence as Defendant's Exhibit No. 8.)

BY MR. FADLER:

214 Q. I would like to offer this for your identification, Mr. Bowdan, and give you another check. What is it? A. A check on 11-12-43, which I made out to the order of Selma's Gowns in the amount of $1,000, deposited, after endorsing it to Selma's account.

MR. FADLER: I would like to offer this in evidence as Defendant's Exhibit No. 9.

MR. BOARDMAN: No objection to it being admitted, Your Honor.

THE COURT: Very well. Defendant's Exhibit No. 9 will be received.

(Check dated 11-13-43 for $1,000 marked and received in evidence as Defendant's Exhibit No. 9)

BY MR. FADLER:

Q. Mr. Bowdan, I would like to call your attention to this stock account we are talking about here. Did there come a time when you opened a stock account at Orvis Brothers? A. Yes, sir.

Q. And when was that? A. I believe the first -- you have the record there -- I believe the first transaction was in the year 1945.

MR. BOARDMAN: December 31, 1946 is the first one. Your Honor, he said the record was here. The first transaction shows December 31, 1946.

215 BY MR. FADLER:

Q. I show you these records here. What prompted you to open this account? A. I have always traded on the stock exchange market, away back for the past thirty-odd years.

216 Q. Did any of Mrs. Bowdan's money, or any of Selma Corporation's money go into this account? A. Later on, some of our money went into it.

THE COURT: Answer his question.

BY MR. FADLER:

Q. Did your money go into it from Selma's? A. Yes, sir.

Q. And how much money from Selma's went into this account to start it? A. To start with, very little. I don't think anything at all to start, to open the account.

Q. You mean you put some stock in it? A. I put stock to open the account; and the first transaction was a $1200 cash, check for 100 shares of stock.

Q. In other words, to open this account, you mean that you put some of your stock into it? A. Yes, sir.

* * * * *

Q. Was there any cash money from Selma's that went in to open the account? A. I may or may not have used $1200 from the Selma account, or of my own money at that time.

217 Q. Now, was there any stock that went in to open this account, shares of stock? A. I owned some certificates from prior years that I put up as equity to start the account.

Q. Now, between the time it was opened and the time it was closed, how much money from Selma's, Inc. went into that account? A. I couldn't answer it that way. I don't know the figures. I used my own money and money from my own company to purchase stock when I saw

fit to do so.

Q. By, your own company, you mean Murray R. Bowdan? A. No, at that time, it was Selma's and my own.

Q. Selma's and your own? Could you estimate how much went into it? A. Well, I should say in the neighborhood of 30, 35 thousand dollars.

Q. Now, why was that put in the name of Hilda L. and Murray R. Bowdan? A. Well, everything I did, I did that way, for my wife and for myself.

Q. And how did you consider everything you owned, including Selma's and the stock? A. Both my wife's and mine.

218 Q. Now, I would like to call your attention to a stock certificate for 100 shares of DWG Cigar Corporation. Will you tell the Court what that is? A. That is 100 shares of stock certificates that I purchased in the year 1938, and I put that particular certificate in my wife's name.

Q. Now, who paid for that? A. I did.

Q. Was your wife working at the time, in 1938? A. No, sir.

Q. Had she worked for the prior five years? A. No, sir.

Q. Did she have any money to buy that stock with? A. At that time, she may have had a little money.

Q. But you bought it? A. Yes, sir.

Q. And why did you put it in your wife's name? A. I just did, because I thought a lot of her, and glad to do it.

Q. Were there any dividends from this stock? A. Yes, sir.

Q. Who got the dividends? A. Mrs. Bowdan has received the dividends in the last four years.

219 Q. You have given her the dividends since 1938? A. No. From 1938 until 1951, the dividends came to my wife or I; and we put them in our income tax as addition; and then I gave her the money of all the dividends.

Q. In other words, she has received the dividends from the stock? A. Yes, sir.

Q. What do they amount to at this time? A. In total?

Q. Yes. A. Well, one year they declared a stock dividend of over

$400, which I turned over to her.

Q. What year was that? A. That is about fourteen years ago, or so.

Q. Fourteen years ago? A. But they have been sending a regular amount each year, three or four times a year, and she has been receiving that money.

Q. What was the payment in 1950? A. In total for the year's dividends?

Q. Yes. A. Between 150 and 180 dollars, I believe.

Q. Now, do you know of a corporation known as the Gable Corporation? A. Yes, sir.

220 Q. What is the Gable Corporation? A. The Gable Corporation is a corporation formed to own and operate a commercial building.

Q. Do you own any interest in that? A. Yes, sir.

Q. How much do you own in that? A. One-sixth.

Q. That is, one-sixth of the shares? A. Of the total capitalization.

Q. Are any dividends paid on that? A. Yes, sir.

Q. Prior to 1951, who received the dividends? A. I did.

Q. How much were they in the year 1950, the dividends? A. The first year was $400; the second year, $400; and it was $500; and then there was $500. After that, Mrs. Bowdan received all the dividends, which is between 6 and 8 hundred dollars per annum.

Q. When did Mrs. Bowdan receive the first dividend, what year? A. The year we separated, and I was making up my income tax, I called her brother, Dr. Irving Lichtman --

Q. In what year was that? A. In 1951. -- and I asked him where is my dividend check from Gable.

221 Q. Is he one of the officers in the corporation? A. He is.

MR. BOARDMAN: May it please Your Honor, I at this point object to this Gable Corporation. It is not involved in the case. It is not in issue here, as I understand it. That is property that is in the name of --

MR. FADLER: I think it is material in this way.

THE COURT: Let me hear the objection first.

MR. FADLER: Certainly.

MR. BOARDMAN: -- in the name of Mrs. Bowdan's brother. There is some controversy between --

THE WITNESS: There is no controversy.

MR. BOARDMAN: We have nothing in litigation here about it in this case. This is litigation between Mr. and Mrs. Bowdan. I think it should be explained how it enters into this case.

THE COURT: This Plaintiff makes no claim to it.

MR. FADLER: All right, Your Honor. I was just pointing out the Plaintiff is very well off. She is claiming alimony and support, when she has been receiving all these funds for years. I wanted to show that since 1951 she received this $800 from this corporation.

THE COURT: Do you claim that she has not received the dividends?

222 MR. BOARDMAN: I don't know, Your Honor. I will find out.

THE COURT: Well, I will take the evidence and see whether it fits in.

MR. FADLER: All right.

BY MR. FADLER:

Q. Since 1951 to the present --

MR. BOARDMAN: She says she does not receive it, Your Honor.

THE COURT: Well, ask this man, the husband.

MR. FADLER: All right, sir.

THE COURT: Whether he knows about it; whether she received the dividends or not.

BY MR. FADLER:

Q. To your knowledge, has Mrs. Bowdan received dividends since 1951 to the present? A. I was so told by her brother when I called him.

THE COURT: You have no personal knowledge?

THE WITNESS: No, sir.

THE COURT: All right, then the answer may go out.

BY MR. FADLER:

Q. Have you received the dividends? A. No, sir.

223 Q. Have you tried to collect the dividends? A. Yes, sir.

Q. Who holds the certificates at this time? A. I believe to the best of my knowledge, Dr. Irving Lichtman.

Q. Now, have you told Mrs. Bowdan that you would give her the DWG Cigar Corporation stock? A. I did tell her that.

Q. Does she own it? A. No, sir.

Q. Who is the owner of the shares? A. I am the rightful owner of it.

Q. You are just making a gratuitous gift of it? A. Yes, sir.

Q. While you were living at the residence of the Plaintiff's parents, had you ever talked about moving? A. Yes, sir.

Q. On what occasions had you talked? A. On two specific occasions, I had an opportunity to buy houses, private dwellings, so that we could move in.

Q. What were the dates, the approximate times of that, between the time you moved in there in 1940 until 1951? A. About 1945, and then in about 1949.

Q. Now, in 1945, what was the conversation that you had with her concerning this? A. I asked -- I told my wife that there was a beautiful home a few streets away, that I would like to purchase it, I would like her to see it. She said: No; we can't leave our folks.

224 Q. What did you tell her you wanted to purchase it for? A. For our home. I said: If that is the case, let's take the folks with us. And she didn't do that.

Q. What was her reason? A. She would rather live with her parents than with me.

Q. She told you that in 1945? A. In '45, she wanted to stay at that house. She didn't want to move away.

THE COURT: He isn't saying that she said it. It is what he says.

BY MR. FADLER:

Q. Now, what did your wife tell you at that time, 1945, about her leaving her parents' home and living with you in a new house? What did she say? A. She wanted to live with her parents.

THE COURT: Not what she wanted to do. What did she say?

THE WITNESS: She told me that. She told me she wants to live with her parents.

BY MR. FADLER:

225 Q. Then you mentioned, as you just said, to bring the folks with you; is that right? A. Yes, sir.

Q. What did she say about that? A. Well: We won't do it at this time. She won't move at this time.

Q. Did you have occasion to have conversation with her later about this? A. Later on, there was another home that was offered to us, and Mrs. Bowdan and I went and visited it.

Q. Was this in 1949? A. In '49 or so, and --

Q. Where was this located? A. On Reno Road, N. W. here, a very lovely little home. Mrs. Bowdan and myself examined it thoroughly; we liked it; and we made good arrangements to take it, when again she said: My folks won't move there. And I again said: Let's bring the folks with us.

She then took it up with her brother, Dr. Paul Lichtman, who looked over the house, and he said: I don't like the location. It is kind of swampy. And that deal fell through. That was the end of that.

Q. What did your wife tell you about her conversation with Dr. Paul Lichtman? A. Well, she just relied on his advice, that was all.

226 Q. What did she tell you about that? What did she say to you? A. Just that she wouldn't take it; she wouldn't move.

Q. Now, in 1950 and '51 -- Strike that. Did your wife suffer from any sort of ailments since you have known her, since coming to Washington? A. Yes.

Q. What did she have? A. My wife was always troubled with a heart condition.

Q. Who was treating her for that? A. Her brother, Dr. Paul Lichtman.

Q. Did she complain to you about it? A. Oh, yes, many times.

Q. Was she taking any kind of medication? A. Yes, she was.

Q. What did she take, to your knowledge? A. Different medicines that the Doctor prescribed.

Q. Now, I would like to call your attention to the last of 1950 to

1951. Did you notice any personality change in your wife? A. Yes, sir.

Q. And what was that change you noticed? A. Well, that change, when she was going through change-of-life, she became very irritable and very very bad.

227 Q. Did she show any signs of temper? A. Very much so. At the time, she got so bad, I suggested that she visit her brother, the doctor, who might suggest a, recommend a proper medical service to her and for her.

Q. You mean services by himself? A. No; he or whoever the specialist might be in that particular department.

Q. Did she follow your advice? A. She went once to the best of my recollection to the doctor; but she never went further. She was recommended to go to another doctor; and she never did.

Q. Now, you heard your wife this morning say that you gave her several tongue-lashings. Is that true or untrue? A. No, sir.

Q. Is that true or untrue? A. Untrue.

Q. In her presence, did you ever have any conversations with her mother in 1950 and '51? A. Yes.

Q. What was your wife's attitude toward you in 1950 and '51? A. Well, about 1950, or thereabouts, when she was going through this change, she couldn't see me for dust. I was just poison in her eyes. She nagged; drove me crazy, night after night.

228 Q. Let me ask you this: Was there any talk about stock certificates at this time, that stock account? A. At one time there was.

Q. Did she know about the stock account? A. Yes, sir.

* * * * *

Q. Did you ever have any conversation in Mrs. Bowdan's presence with her sister-in-law about the stock account? A. Yes, sir.

Q. Is there any doubt in your mind that she knew about it? A. No, sir.

Q. Was there any conversation between you and your wife and mother-in-law while you were living in the house about the stock account? A. Yes, on many occasions.

229 Q. What were the conversations about and when did they begin? A. Oh, about in 1945, my wife and mother thought I should sell all these stocks.

MR. BOARDMAN: May it please the Court, the record shows the account was opened on December 31, 1946.

BY MR. FADLER:

Q. When was the first time they wanted you to sell this stock? A. I believe it was about in '46 and '47, when we came back from a vacation. Both my wife and myself were on a vacation up in Cape Cod; and at that time, the market dropped a little; and they bawled the devil out of me for not selling it while it was higher previously to this time.

Q. What stock was that in particular? A. Various stocks that we held at that time.

Q. Did these conversations with you and your mother-in-law and wife continue? A. Yes, sir.

Q. What was the tempo of the conversations, discussions between you and your wife and mother-in-law concerning these stocks in 1950? A. About 1950, every solitary evening they nagged me to get rid of the stocks, get rid of the stocks, they will go down, they will go down. They drove me crazy.

230 Q. You heard your wife testify yesterday that she didn't want you to sell any of these stocks. Is that true or untrue? A. Untrue.

MR. BOARDMAN: She never testified to that yesterday, Your Honor. The testimony was she called him from New York and advised him to sell them; and said he had already sold them and cleaned the account out. Now please quote her correctly.

MR. FADLER: I take exception to that, because I asked her. Said he didn't have any right to sell the stocks, and she didn't want him to sell. That is my question. It is my recollection. I will refer to the record when I can locate it properly.

BY MR. FADLER:

Q. But she wanted you to sell the stocks? A. Yes, sir.

Q. Were any other members of the family drawn into this in front

of you and your wife? A. Her father and her mother evening after evening.

Q. And Mrs. Irving Lichtman. What about Dr. Paul; was he in on this? A. Not at this particular time, no, sir.

231 Q. Did any other members of the family come into this discussion between 1950 and '51? A. They were always discussing things --

* * * * *

Q. Were there any other members besides the mother-in-law, father-in-law, the wife and Mrs. Irving Lichtman -- any other members ever came into it between 1950 and '51, in September? A. Not at the time.

THE COURT: Just answer his question.

BY MR. FADLER:

Q. Between '50 and September of '51, until you and your wife separated, were any other members of the family in on the discussions? A. No, sir.

Q. Did there ever come a time when your wife ordered you out of the house? A. Yes, sir.

THE COURT: I wouldn't suggest.

MR. FADLER: Sir?

THE COURT: I wouldn't suggest the answer that you want. Ask for the conversation.

BY MR. FADLER:

Q. Were there any conversations -- A. Yes, sir.

232 Q. -- regarding your living in the house in 1950 to September 1951? A. Yes, sir.

Q. And what were these conversations? A. My wife came to me and said to me: I am feeling very sick.

Q. When was this now? A. In about 1950. And I want you to leave the house.

Q. Was there anyone else present at this time when you talked? A. On this particular occasion, her mother was there present.

Q. What was her mother's attitude? A. The same way. They wanted me to leave the house.

Q. Why did they say they wanted you to leave the house? A. Because if I left the house, they felt that she would get better. I said: No, that is not so. What she needs is non-interference from her mother, and she needs medical service.

Q. What was their attitude on that? A. Just left just that way; and this was repeated time and time again.

Q. How often did you have discussions on this subject of your leaving the house during 1950? A. Oh, at least a half dozen times or more.

233 Q. Did you have any discussions with your father-in-law in the house on this? A. My father-in-law --

THE COURT: Just answer his question.

THE WITNESS: How was that again?

BY MR. FADLER:

Q. Did you have occasion in front of your wife to have any discussions with your father-in-law on this? A. No, sir.

Q. Did he hear the discussions between you and your wife? A. On some occasions, he knew what was going on.

Q. Did he take part in the discussions in front of your wife? A. No, because his wife would never allow him to.

Q. Did you have any discussions with your wife and your mother-in-law in 1950 -- A. Yes, sir.

Q. -- along this line? What were these discussions? A. Just the very same thing. She would annoy me. She would annoy her daughter to death. Make her go up to sleep. She is tired; she is sick; she is going to die. A very old-fashioned woman.

234 I said: She would be much healthier if you left her alone. I said: She is big enough and old enough; and she has her own child. You shouldn't interfere this way. What she needs is medical service and information.

Q. Were there any further discussions with your wife as to you living in the house? A. Yes. Again she repeated it; and it was on a Monday night that I was watching the television with her father.

Q. When was this now? A. This is about a week later than what the folks were saying I left the house on a Sunday. I didn't leave the house

that Sunday at all.

Q. Well, will you please explain the conversation that you had when you were watching television on a Monday? A. My father-in-law and myself were sitting in the back room watching the television show; and my mother-in-law sent her daughter upstairs to go to sleep; and then she called me into the kitchen and she says: This is the last time I am going to tell you it is the best thing for you to do for Hilda's sake, for you to get out.

MR. BOARDMAN: May it please Your Honor, I object and move that that be stricken; not in the presence of the daughter and the person is also dead.

THE COURT: Sustained.

235 BY MR. FADLER:

Q. What was your wife's attitude in 1951 while you were living in your mother-in-law's house as to your living upon the premises? A. Very uncooperative. She turned out to be from a very sweet wife for about nineteen years to a demon. She left the bed to go to the front room; never talked; never conversed; never wanted to do anything; just sulking, angry, bitter, and just not fit to live with.

Q. And she would go to see the doctor to take medication? A. No; she never took care of that. Only when it was an emergency, when she probably thought she was dying, then she would run up at the last minute to her brother to get a little assistance.

Q. Was that on the heart condition or change-of-life? A. On all. That is the way she conducts herself physically. She don't go unless she is carried there.

Q. Did there come a time when you separated from your wife? A. Yes, sir.

Q. When was that? A. That was in the latter part of 1951.

236 Q. Will you tell the Judge the circumstances surrounding that separation? A. I remember very clearly that that night my wife came to me and said: You had better get out, because I am feeling bad; and if you go out and in a few months' time, if I feel better, I will call you and

see if we can get back together again. The next morning I went to work; and I didn't return.

Q. Now, at the time your wife said this, what did you tell her? A. There is no reason. I didn't want to leave the home. I was very fond of her, very considerate of her; and if she would take medical care, she would get better.

Q. Now, after you left, have you contacted her? A. I have.

Q. Has she ever contacted you? A. No, sir.

Q. Has she ever attempted to contact you, to your knowledge? A. No, sir.

Q. On how many occasions have you contacted her? A. Oh, about once every month, month and a half, or two months.

Q. What was your conversation with her? A. Asked her how she was feeling, how she was getting along, what is new, and would she like me to come back.

237 Q. And what was her answer to those things? A. No. She wasn't feeling good at all. She don't feel good at all.

Q. Now, you heard your wife say here this morning that when you left the house --

First of all, you heard her testimony. Did you leave the house and stay on the Sunday that your brothers-in-law and sister-in-law were talking about? A. I was home that afternoon and evening and stayed there for many weeks before the blow-up, before I went away.

Q. You did not leave at that time? A. No, sir.

Q. Now, what was the occasion on that Sunday that caused all this excitement that they were talking about? A. The excitement that afternoon -- being she acted so contrary and so foolish, I would call it, and I wanted them to come over to see, to tell her, to inform her to take care of herself, because she would get very sick if she didn't.

Q. You weren't calling them as any witnesses, as they were trying to make out here, that you were going to desert her? You didn't want any witnesses that you were deserting your wife; did you?

MR. BOARDMAN: Just a moment, Your Honor.

238 THE COURT: You must not suggest the answer. Let him give his own reasons.

BY MR. FADLER:

Q. Why did you want these people to come in at this time? A. I wanted them to knock some sense into her head so that she would become healthy and be a normal living woman.

Q. Now, when you did finally leave, was there any -- you heard your wife say that she was shocked you were going to leave. A. She was always shocked, before and after. She was just that sick.

Q. Just a moment. Was she shocked at the fact that you would be leaving? A. No. I haven't talked to her that morning. She was asleep in a different bedroom.

Q. You think that she had in her mind -- had been wanting you to leave or not? A. Yes, sir.

THE COURT: You must not suggest what he would be thinking.

MR. BOARDMAN: I think Mr. Fadler would make a better witness, and I will consent that he come around and take the witness stand. He gives much better testimony than his client.

239 MR. FADLER: I just want to help this gentleman get in the record the actual facts in the case and not try to keep it out from an emotional side.

THE COURT: Let him give the facts.

BY MR. FADLER:

Q. When did you separate from your wife, Mr. Bowdan? A. I think it was toward the end of the year of 1951.

Q. Where did you move? A. To 1426 Saratoga Street, N. E.

Q. Who did you live with there? A. Mr. Maurice Brown.

Q. How long did you live there? A. About six months.

Q. Where do you live at this time? A. 916 Delafield Place, N. W.

Q. Did you move from there to the present residence? A. No. Six months after that, I moved to our friends', Mr. and Mrs. Rubin at 10115 McKinley Avenue, Silver Spring, where I lived for about three years and a fraction. Then after that, I moved to this present address, where

I now reside for about a year and a quarter, a year and a half, with a family, Mr. and Mrs. Mandle.

Q. Do you think there is any chance of reconciliation between you and your wife? A. If my wife --

240 Q. As far as you are concerned? A. Yes, sir.

Q. Now, in your conversations with your wife, when you would call her up inquiring about her health, what did she say her health is at present? A. Not too good.

Q. Does she say she is feeling better or worse or --

THE COURT: Why don't you ask what she did say?

BY MR. FADLER:

Q. What did she say? A. Well, sometimes she feels good, and most of the time she doesn't feel so good.

Q. When you separated from your wife, did she protest your going? A. No.

Q. Did she act shocked that you were leaving? A. No.

Q. Was anyone present besides you and your wife when you left? A. No.

Q. Was it with your wife's full accord that you left? A. Yes, sir.

Q. Would you take your wife back at the present time? A. Yes, sir.

241 Q. Have you had conversations in front of your wife with your brothers-in-law about you getting a place to live together other than the residence of the father-in-law? A. I don't understand that.

Q. Have you had conversations with Dr. Paul and Dr. Irving Lichtman concerning a new residence for you and your wife? A. Only at that time that I stated earlier, the conversation.

Q. Have you ever been cruel to your wife at any time? A. No, sir.

Q. Have you ever struck your wife at any time? A. No, sir.

MR. BOARDMAN: We haven't charged that he did, Your Honor. I object, because we have made no claim that he has.

BY MR. FADLER:

Q. Have you always been a loving husband to your wife? A. Yes, sir.

Q. Did your wife ever cook a meal for you in the house where you lived? A. Very rarely.

Q. How often was your wife out of town on buying trips? A. At least every other week for two or three days.

242 Q. Two or three days. Did you ever ask your wife to go out socially with you in 1950 or '51? A. Yes.

Q. Did she ever go out with you? A. No; she just didn't feel like it. Whenever she would see me leaving, if I asked her to do something, go for a ride, go for a walk, go for a picture, she was always sick and tired.

Q. And she never went out once with you socially in '50 or '51? A. On occasions, weekends, we visited her brother, one or the other brother. Most of the time the entire family came to our home, where I purchased all the food and had served them from morning to night every Sunday, Friday night, and every legal holiday that we were home. They were all over there.

Q. Since 1943 to 1951, has your wife been well provided for as far as food, clothing and shelter? A. Yes, sir.

Q. Has your son been adequately provided for? A. Yes, sir.

MR. FADLER: That is all.

CROSS EXAMINATION

BY MR. BOARDMAN:

243 Q. Mr. Bowdan, when you came here from New York in 1940, how long had it been since you had been working? A. I was never out of work.

Q. Did you quit your employment in New York to come to the District? A. Yes, sir.

Q. Where did you quit working? A. I had my own little jobbing business known as Max Factor at 1440 Broadway, New York City. We weren't doing too well.

Q. Were you in financial difficulties when you left New York to come here? A. No. I was short. It was bad times. I didn't have any difficulty.

Q. How much money did you have? A. I had a little money.

Q. How much? A. Well, let me think now. Say, a few hundred dollars.

Q. Let's don't say. How much did you have? A. I can't say accurately. A few hundred dollars, we will say.

Q. You were having hard times; weren't you? A. Yes.

Q. And you accepted the invitation of your wife's parents to come live with them? A. It was a good agreement and a good arrangement for a help to get us started, yes.

244 Q. You needed help; didn't you? A. Yes.

Q. And you left New York owing a doctor's bill; didn't you? A. We owed one doctor for my son's thing, yes, sir, which I later paid in full.

Q. Now, you got down here and you and your wife both started to try to find work; didn't you? A. After some time, after a while.

Q. Well, pretty quick; wasn't it? A. Yes.

Q. You needed the money; didn't you? A. As far as I was concerned. Not my wife. I didn't want her to go out looking for anything.

Q. She got a job first; didn't she? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. How long was it before you got a job? A. Four or five weeks.

Q. And you started working for -- A. Try-Me Bottling Company.

245 Q. How much did you make? A. The first few weeks was very small.

Q. How much? A. Well, the first week was $5.09, which I gave to my mother-in-law. The second week was $12; then I increased, $35, $45 per week, up to $100 some weeks.

Q. Now, when did your wife first get a job? A. She didn't get a job, sir. A proposition was offered. I didn't let her work and didn't want her to work; and I told her that a thousand times; and she will attest to this. There came along a proposition by a friend of her brother's, Dr. Phil Robin, who was liquidating a ready-to-wear store, and he asked her to come in and help; which she did.

Q. Didn't your wife work at a place called Rosalee-Robin for about two years? A. That is the place I am alluding to, sir. No, sir, she

didn't work there.

Q. She brought home a pretty good salary from there; didn't she? A. Whatever salary she brought home was hers to use as she saw fit. I was earning money at that time also, sir.

Q. You said first she didn't work there, and secondly, whatever salary she brought home was hers. What is the explanation of that? A. The difference between what I am saying and working, she was in on a business proposition, so I wouldn't call that as an employe.

246 Q. She got money for what she was doing; didn't she? A. Yes, sir.

Q. She got more money than you were making; didn't she? A. No, sir.

Q. She spent her time down there; didn't she? A. Yes, sir.

Q. And you don't call that working? A. Anyone who is a member of any organization works, but she was not what we call an ordinary employe. That is what I am trying to say to you. She didn't work like an ordinary person.

Q. There came a time, did there not, that she called your attention to an advertisement in the paper -- A. No, sir.

Q. -- about Selma's Gowns being for sale? A. No, sir.

Q. She asked you to go see somebody about it; didn't she? A. She and I talked about a proposition --

THE COURT: Answer his question.

THE WITNESS: I will answer that --

247 THE COURT: Answer his question.

BY MR. BOARDMAN:

Q. My question was, did your wife ask you to go to see somebody? A. Yes, sir.

Q. She had seen this advertisement in the paper; hadn't she? A. I don't know whether it was an ad or not. I don't think it was that way.

Q. She asked you to go see them? A. Yes, sir.

Q. You did go see them? A. Yes, sir.

Q. You reported that you could buy the business for $680; didn't you? A. Yes, sir.

Q. And it was agreed that it would be bought; isn't that right? A. Yes, sir.

Q. And she borrowed $500 from her mother? A. Yes, sir.

Q. Neither you nor she had any money at that time? A. In cash.

248 Q. Did you have money? A. Not in cash.

Q. You had bonds and stocks? A. We had a little stocks, yes, sir.

Q. And you gave a note for the rest of it? A. Yes, sir.

Q. And it was agreed that you would buy the shares of stock of Selma's Gowns, Inc. in your name; isn't that right? A. Yes, sir.

Q. Paid $500 and gave a note for $180? A. Yes, sir.

Q. Now, isn't it a fact, sir, that as shown by Plaintiff's Exhibit No. 2, you acquired the corporation stock on or about February 12, 1942? A. Yes, sir.

Q. As shown by this agreement with your signature on it? A. Yes, sir.

Q. Now, some of that stock was put in your wife's name and some in your mother-in-law's name; isn't that right? A. Not at that time.

Q. Well, at some place along there. A. Later on.

Q. When? A. I don't know. You tell me.

249 Q. Well now, sir, you acquired the stock -- A. Well, at the present time -- up until that time, I had all the stock in my name.

Q. Up until when? A. All the time, until today.

Q. Until today? A. Yes, sir.

Q. It is still in your name? A. Yes, sir; was never changed.

Q. It is still a corporation? A. It should be, yes, sir.

Q. Then at no time was any of this stock ever put in the name of your wife or your mother-in-law? A. Never.

Q. Never? You don't dispute that that is your signature on Plaintiff's Exhibit No. 6; do you? A. That is my signature.

Q. And you don't dispute that it is your signature on Plaintiff's Exhibit No. 5; do you? A. That is my signature; but it was never accomplished.

Q. On Plaintiff's Exhibit No. 5, you say: "We, the undersigned,

being all the stockholders of Selma's, Inc., do hereby waive notice of time and place of meeting," and so forth; and it is signed by Hilda L. Bowdan, Murray R. Bowdan, and D. Lichtman. A. My lawyer prepared that.

250 Q. You signed it; didn't you? A. Yes, sir.

Q. You knew that your wife and mother-in-law were stockholders when you signed it; didn't you? A. No, sir.

* * * * *

BY MR. BOARDMAN:

Q. Did you know that they were stockholders when you signed that waiver, along with them? A. That was prepared to make --

THE COURT: Answer the question.

THE WITNESS: No, sir, not at that time, gentlemen.

251 BY MR. BOARDMAN:

Q. You were just signing something that wasn't so? Is that what you were doing? A. We were contemplating that deal, and the deal was never consummated.

Q. Now, on Plaintiff's Exhibit No. 6, which you signed as secretary, it says: "A special meeting of the stockholders of Selma's, Inc. was held at the office of the company on the 7th day of August, 1942 at 2:30 p.m., there being present, Murray R. Bowdan, Dora Lichtman and Hilda Bowdan, constituting all the stockholders of the company." When you signed that as secretary of the corporation -- A. I signed that.

Q. -- did you know that they were stockholders? A. I signed that. I signed that.

THE COURT: Answer his question.

THE WITNESS: I signed that.

BY MR. BOARDMAN:

Q. You knew they were stockholders -- A. Yes.

Q. -- on the 7th day of August, 1942? A. They weren't, in fact --

THE COURT: No; you must answer his question.

252 THE WITNESS: I signed that; I acquiesced.

THE COURT: That isn't the question.

MR. FADLER: I object, Your Honor, here to this, because these papers were prepared by an attorney, Joe Bulman, for a transaction --

THE COURT: This question doesn't relate to the papers. The question is whether when that was signed he knew that the wife and the mother-in-law were stockholders.

MR. FADLER: He has just testified, Your Honor, that they never were, to his knowledge.

THE COURT: Well, let him answer this question.

MR. BOARDMAN: He has also testified positively on the record that they were stockholders.

THE WITNESS: No. I was trying to talk. You don't give me an opportunity.

THE COURT: Put your question, and let's get an answer.

BY MR. BOARDMAN:

Q. When you signed this Plaintiff's Exhibit No. 6, minutes of the special meeting, reciting that on August 7, 1942, at 2:30 p.m., there was a special meeting of Murray R. Bowdan and Dora Lichtman and Hilda L. Bowdan, constituting all the stockholders of the company, did you know they were stockholders? A. That was preparatory for the future.

253 THE COURT: You must answer the question.

THE WITNESS: Answer the question. I did not know, sir, at that time that they were stockholders. That was prepared when we were going into it --

THE COURT: Just answer the question.

THE WITNESS: I said, no, sir, Your Honor.

BY MR. BOARDMAN:

Q. Did you sign as secretary of the corporation -- A. Yes, sir.

Q. -- a statement that you knew to be false? A. That is not false.

Q. It isn't? A. No.

Q. Is it true or false that on that day the three of you had a meeting, constituting all the stockholders? Is that true or false? A. To the best of my recollection --

THE COURT: No; answer his question. Answer his question.

MR. FADLER: Your Honor, I think here that we need some enlightenment from Mr. Bowdan to clear up this transaction. These papers were all prepared; nothing on file --

THE COURT: This doesn't relate to the papers. The question is independent of the papers. He is stating a date.

MR. FADLER: He might need some recollection back to '42.

254 THE COURT: Read the question, and let's get an answer.

(Whereupon the pending question was read by the reporter.)

THE WITNESS: Can I say something here, Your Honor?

THE COURT: No. You can answer the question.

THE WITNESS: At that particular time, they were not the stockholders of that corporation.

THE COURT: Then your answer is that it was false; is that correct?

THE WITNESS: It is untrue.

THE COURT: Is that correct?

THE WITNESS: They were not stockholders at that time.

THE COURT: The question was whether it was true or false.

THE WITNESS: False.

THE COURT: All right.

MR. FADLER: I would like to point out, Your Honor, he has nothing in front of him to refresh his memory back to 1942, and that is the best of his recollection, Your Honor.

THE COURT: He doesn't seem to need any.

MR. FADLER: That is the best of his recollection.

THE WITNESS: We were preparing these papers --

THE COURT: There is no question.

* * * * *

256 BY MR. BOARDMAN:

Q. Mr. Bowdan, I hand you Plaintiff's Exhibit No. 3, which is entitled "Agreement of Conveyance" and ask you if that is your signature on it? A. Yes, sir.

Q. And you understand, do you not, sir, that that is a document by which Selma's Inc. transferred the business to Hilda L. Bowdan? A.

No, sir.

Q. Well, you signed it for that purpose, didn't you? A. It was prepared but it was never consummated; it was never completed.

Q. Did you go before a notary public with that? A. No, sir.

257 Q. You don't know why a notary public said you did. A. I don't know. I don't see my signature there.

Q. Hattye F. Colbert, a notary public, in and for the District of Columbia, do hereby certify that Murray R. Bowdan, who is personally well known to me to be the person named as attorney in fact in the foregoing instrument, bearing even date herewith, to acknowledge the same personally appeared before me in the said District, and as attorney in fact as aforesaid, and by virtue of the power and right in him vested in the aforesaid agreement, acknowledged the same to be the act and deed of Selma's Inc., and delivered the same as such." A. I did not.

MR. FADLER: I object, if Your Honor please. Who signed that statement there?

MR. BOARDMAN: A notary.

MR. FADLER: Is he the notary?

MR. BOARDMAN: No. I am asking him if he appeared before this notary and made any such acknowledgment.

MR. FADLER: All right.

THE WITNESS: No, sir.

MR. FADLER: I object to that, Your Honor. I think the best evidence would be to bring the notary in and ask him.

MR. BOARDMAN: Well, he has denied that he has done it.

THE COURT: Objection overruled. The answer may stand.

258 BY MR. BOARDMAN:

Q. Now, you say it was not consummated? A. No, sir.

Q. Why not? A. There was never any sale completed. There was no consideration. There was no moneys exchanged. It was never finished. It is unfinished business.

Q. When did you first come to that conclusion? A. When I studied these papers.

Q. When?

MR. FADLER: I object, Your Honor. That question is kind of vague -- when did he come to what conclusion?

THE COURT: Objection overruled.

MR. FADLER: It calls for an opinion.

THE WITNESS: I will ask --

BY MR. BOARDMAN:

Q. When did you come to the conclusion that this transaction of Selma's Inc. conveying the business to Hilda Bowdan was not consummated? A. Away back in 1943 or 1945 when we started this thing; it was never finished.

Q. You thought that it was finished though, didn't you? A. No, sir.

Q. You never have thought that? A. No, sir.

259 Q. Then the corporation in your opinion, still owns the business, is that correct? A. Yes, sir, that's the way I feel.

Q. When did you come to that feeling, sir? A. In 1943 and 1945 because this deal was never finished.

Q. In what way wasn't it finished? A. It was never legalized; it was never done. We were talking about it but we never completed this proposition.

Q. This agreement of conveyance was delivered to Mrs. Bowdan, wasn't it? A. It was all held at my lawyer's who got paid to do that; if I remember correctly that was the time our attorney advised us in 1945 to dissolve the corporation for tax purposes, and it was never finished. That is to the best of my recollection, and it was never completed.

Q. Do you know how Mrs. Bowdan got this conveyance -- A. I don't know.

Q. -- if it wasn't given to her? A. I don't know, sir.

Q. Do you recall, sir, that I took your deposition down here in the courthouse before David Spatzer, a notary public, on December 30, 1954? A. Yes, sir.

260 MR. BOARDMAN: Does Your Honor have that deposition?

THE COURT: I have it.

BY MR. BOARDMAN:

Q. Directing your attention to page 13 of that deposition, I ask you if on December 30, 1954, I did not ask you these questions, and you then gave these answers that I shall read:

"Q. Did there come a time, Mr. Bowdan, when the corporation sold or transferred its business to your wife? A. I would have to say it was sold or transferred. I never saw a penny No. 1 out of it. I never received one cent out of this thing here.

"Q. Well, Mr. Bowdan, do you know anything about the affairs of that business up there? A. Yes, I did very much at that time.

"Q. Do you remember anything about it now? A. What was going on then or today?

"Q. Do you remember now what went on then? A. More or less, yes, I should know.

"Q. You do remember, don't you, that there came a time that the business was transferred into your wife's name and the corporation was dissolved, or at least you thought it was? A. Yes."

261 Q. Do you admit or do you deny that you made that answer? A. I do not deny that statement, but it was very vague and I could have been confused at that time of the deposition; I was caught unawares in everything that you state in there yourself, and I didn't just grasp all the questions and I could have erred in some of my answers.

Q. You do not deny that you gave the answer "Yes" to that question? A. Whatever is there I gave.

Q. Continuing on page 14, and will you listen to this carefully, sir?

"Q. It was your intention that the corporation should be dissolved, wasn't it? A. Yes."

Did you give such an answer to that question? A. Yes, if it was to be finished, but that deal was not finished. We contemplated that.

Q. Now, sir, Selma's Gowns, Inc., or that corporation, who was the president at the time these papers were signed purporting to convey

the business to your wife? A. I believe Mrs. Hilda L. Bowdan.

Q. Who was the secretary? A. Murray R. Bowdan.

262 Q. Who was the treasurer? A. To the best of my recollection there was a secretary in our attorney's office who was given an office and a share of that stock. That's the way it was proposed by my attorney.

Q. Who was the treasurer? A. I really do not know.

Q. It was you, was it not? A. It may have been; I don't know.

Q. Well, this was a corporation. A. I don't remember exactly.

Q. I want to ask you this question, and with the Court's approval I tender willingness that before he answers it he be permitted to confer with his attorney. The reason I am going to ask the question is to limit this to what he claims. Do you now claim that the business known as Hilda's Gowns -- A. There is no such thing.

Q. What is the name of it, according to you? A. Selma's Gowns.

Q. My mistake; I stand corrected -- that the business known as Selma's Gowns belongs to you personally? A. Yes, sir.

Q. To you, Murray R. Bowdan? A. Yes, sir.

263 Q. To you alone? A. In the legal sense I would have to say yes. In ordinary life, everything between my wife and myself we always considered when and if the time came, or anything, would be exactly fifty-fifty.

Q. I will ask my whole question so you will see what I mean. I want to know now from you, with the advice of your attorney, whether today you claim that Selma's Gowns belongs to you solely or (2) does it belong to your wife solely? Or (3) does it belong to you and your wife as partners? Or (4) does it belong to Selma's Gowns, Inc., a corporation? Now, which of those positions do you take? A. I would say if I know it would belong to Selma's Inc.

Q. That is your position then now? A. Yes, sir.

Q. That that business belongs to the corporation? A. Yes, sir.

Q. Of which you are the secretary? A. Yes, sir.

Q. And probably the treasurer? A. Yes, sir.

Q. And of which you claim you own all the stock? A. Yes, sir.

264 Q. Now, Mr. Bowdan, that being so, will you produce -- do you have copies of the corporation's Federal income tax returns from the year 1942 to date? A. In 1942 and 1943 the corporate income tax returns were made that way. In 1945, when my attorney, Mr. Joe Bulman, advised me to dissolve the corporation, and never completed it, we filed, each and every year the right and just income tax according to the income of the business.

Q. Mr. Bowdan, do you have any income tax returns for Selma's Gowns, Incorporated, a corporation? A. I don't have any of the income tax returns. You have them. They were always at Selma's Gowns office.

Q. Mr. Bowdan, did Selma's Gowns Incorporated, a corporation, ever file a federal income tax return since 1942? A. I would think in 1942 and 1943, but after 1945, when it was supposed to be dissolved --

THE COURT: Wait a minute. Just answer the question.

THE WITNESS: No, sir, not that way, not after 1943.

BY MR. BOARDMAN:

Q. Not after the time these papers were signed? A. If they were, we were proposing to dissolve the corporation.

Q. That was in August, 1942? A. Well, in 1942.

265 Q. Well, your answer is that since these papers were signed purporting to dissolve the corporation the corporation has never since filed a Federal income tax return, is that correct? A. Not as a corporation.

THE COURT: Well, I am not satisfied with that answer. Ask the question again.

BY MR. BOARDMAN:

Q. Since 1942, when the papers were signed, purporting as you say, to dissolve the corporation, has the corporation known as Selma's Gowns, Incorporated, ever filed a Federal income tax return? A. The corporation --

THE COURT: Answer his question.

THE WITNESS: I am trying to, sir.

THE COURT: No. That can be answered Yes or No.

A. As a corporation I would have to say no.

THE COURT: As a corporation?

THE WITNESS: Yes, sir.

THE COURT: He is asking about the corporation.

THE WITNESS: The corporation didn't.

THE COURT: Put the question again, and now listen to it.

MR. BOARDMAN: I believe he answered it. He said the corporation didn't. Is that a sufficient answer to satisfy Your Honor?

266 THE COURT: No. He qualifies each answer. I want a direct answer.

BY MR. BOARDMAN:

Q. Mr. Bowdan, since August, 1942, when the papers purporting to dissolve the corporation were signed, has the corporation known as Selma's Gowns, Incorporated, ever filed a Federal income tax return? A. No, sir.

* * * * *

Q. Now, Mr. Bowdan, after the time that this paper, Plaintiff's Exhibit No. 3, agreement of conveyance, which on its face purports to transfer the business of Selma's Gowns to your wife, did you ever personally perform any duties in that business? A. Yes, sir.

Q. On August 7, 1942, were you engaged in some other business? A. Yes, sir.

267 Q. What was that other business? A. Selling wholesale beverages.

Q. And how much did you earn in the year 1942? A. About four or five thousand dollars.

Q. How much did you earn in the year 1943? A. About six or eight thousand dollars.

Q. How much time did you devote to Selma's Gowns in 1943? A. A great deal of time.

Q. How many hours a day? A. Never less than on an average of six hours per day, seven days a week.

Q. Six hours a day, seven days a week? A. Yes, sir.

Q. When, sir, did you perform the duties of selling liquor that enabled you to make the money you said you made in 1943? A. A very simple matter, sir. There was a shortage of beverages, and all we had

to do was to spend a little time on the telephone to dispose of my quota of merchandise, and I spent most of the time, morning, noon, and night, Saturdays, Sundays, and holidays in Selma's Gowns with Mrs. Bowdan.

Q. Did you continue to make a good income from your liquor work in 1944 and 1945? A. Yes, sir.

268 Q. Now, sir, after August 7, 1942 -- that is the date when the paper purporting to convey the business to Mrs. Bowdan was signed -- do these accounts you put in evidence, Defendant's Exhibit No. 1, Defendant's Exhibit No. 2 and Defendant's Exhibit No. 3 -- A. Yes, sir.

Q. Did I understand you correctly to say that that is the way the bank account for Selma's Gowns business was carried? A. Yes, sir.

Q. In the name of Murray R. Bowdan or Mrs. Hilda L. Bowdan? A. Yes.

Q. Do you have any knowledge as to why, if you thought that was a corporation, the bank account for the business was carried in your private names? A. That's the way we were advised, either by my auditor or by my attorney, sir.

Q. If I remember correctly, upon direct examination you referred to this account several times as being Murray R. Bowdan and Hilda L. Bowdan, trading as Selma's Gowns. Did you use that expression? A. Yes, sir.

269 Q. Will you find for me, sir, on this account where it says "Trading as Selma's Gowns?" A. If you have any checks I will show you that it is printed "Selma's Gowns" and signed by Murray R. Bowdan or by Hilda L. Bowdan.

Q. Do you have any accounts which use your name and your wife's trading as Selma's Gowns? A. I said you will find on the checks --

THE COURT: Answer his question.

THE WITNESS: There is on certain checks Hilda L. Bowdan and Murray R. Bowdan.

THE COURT: No. Answer his question.

BY MR. BOARDMAN:

Q. Do you have any bank statements or cancelled checks which

contain the statement Murray R. Bowdan and Hilda L. Bowdan trading as Selma's Gowns? A. There might be some. I don't have any.

Q. You could produce them, could you? A. I don't know; I might be able to.

Q. I ask you to do so, if you can. A. I will try, sir.

Q. Mr. Bowdan, when did you go in the liquor business for yourself? A. November of 1947.

Q. Under the name of Murray R. Bowdan? A. Murray R. Bowdan and Company.

270 Q. And since that time have you continuously -- A. Yes, sir.

Q. -- conducted that business in that name? A. Yes, sir.

Q. Is that business your own personal business or is it a corporation? A. Personal business.

Q. And commencing in November, 1947, when you went in business for yourself, have you had a business bank account? A. Yes, sir.

Q. In what name is that carried? A. Murray R. Bowdan and Company.

Q. And how many bank accounts have you had? A. One at a time; one.

Q. Where was the first one? A. I believe Lincoln National Bank.

Q. In the name of Murray R. Bowdan? A. Murray R. Bowdan and Company.

Q. Where was the next one? A. The Hamilton National Bank.

Q. In the same name? A. Murray R. Bowdan and Company.

Q. Where was the next one? A. I believe the American Security Bank.

Q. Under the same name of Murray R. Bowdan and Company? A. Yes, sir.

271 Q. And where was the next one? A. The present one, the last one for several years, the National Bank of Washington.

Q. Under the same name of -- A. Murray R. Bowdan and Company, and signed by Murray R. Bowdan.

Q. And who has been authorized to sign checks on those accounts?

A. Murray R. Bowdan.

Q. Anyone else? A. No, sir.

Q. Not Hilda Bowdan? A. No, sir.

Q. Or Hilda L. Bowdan? A. No, sir.

Q. At no time? A. No, sir.

Q. Did you start this business afresh or did you buy a going concern? A. I only bought the Washington, D. C. liquor wholesale license from a concern that was going out or transferring.

Q. Did you build the business up with the license yourself, is that correct, sir? A. Yes, sir.

272 Q. You had to have a fair amount of money to do that, didn't you? A. Not necessarily.

Q. You have put a lot of money in that business, haven't you? A. Later on.

Q. The records show that the first transaction with Orvis Brothers, in the account of Murray R. Bowdan and/or Hilda L. Bowdan was December 31, 1946. I ask you specifically, sir, if prior to that time you personally had an account with Orvis Brothers? A. I believe I did have an account there by the name of Murray R. Bowdan. Then later on I transferred it -- I was advised to do it -- and I changed it to Murray R. and/or Hilda L. Bowdane.

Q. And that started December 31, 1946? A. I believe so.

Q. And according to the exhibits in the case there were three accounts up there, is that correct, sir? A. There was normally one but they have to, I guess according to law, they had to comply with the law --

Q. Mr. Bowdan, can we agree -- You understood that as far as you and Mrs. Bowdan were concerned you had an account with Orvis Brothers? A. Yes, sir.

273 Q. You had no knowledge of the technical methods of keeping separate accounts on their books for different things, is that correct? A. Yes, sir.

Q. You just assumed you had one account there? A. Yes, sir.

MR. BOARDMAN: May it please Your Honor, that we are willing

to stipulate, that that was the situation.

THE COURT: That is the way I understood it.

MR. BOARDMAN: The young man testified they kept some four different accounts, but he also said it was parts of one component account, securities, commodities --

THE COURT: Yes, I think they all had a key number.

MR. BOARDMAN: That's right. They all had a key number and then sub-numbers, that's right, so I am going to refer to this as though it were one account.

THE COURT: Yes.

MR. FADLER: If Your Honor please, I would like to get in on this, whatever is stipulated to. I heard Mr. Boardman say he would stipulate, and I would like to get in on it.

MR. BOARDMAN: The stipulation is that it may be agreed that for all practical purposes there was one Murray R. and Hilda L. Bowdan account with Orvis Brothers, and that any subdivisions of that account were matters of bookkeeping with Orvis Brothers, with which the parties were not concerned.

274 MR. FADLER: That is a little vague to me, if Your Honor please. I think we have to be sure that all the accounts and transactions we are talking about concern Mr. Bowdan's proposition here and therefore would be under Murray R. and Hilda L. Bowdan.

MR. BOARDMAN: That is right.

MR. FADLER: And if there are any other accounts that are strictly Murray R. or Hilda L. Bowdan we are not concerned about that.

MR. BOARDMAN: That is right. These are the ones in evidence.

MR. FADLER: In other words, I don't want Mr. Boardman's testimony that they are one account.

THE COURT: Well, you have the key number.

MR. BOARDMAN: That's right; account No. 1315 is the key number.

THE COURT: And then there was cash --

MR. BOARDMAN: And securities and commodities and one other little short sale account there, so I am going to refer to it as the account.

THE COURT: Yes.

BY MR. BOARDMAN:

275 Q. Now, Mr. Bowdan, did I understand you correctly to say, before the noon recess, that this account was put in the name of you and your wife because that's the way you did everything? A. Yes, sir.

Q. Fifty-fifty? A. Yes, sir.

Q. And you did that all the time you lived together, is that correct, sir? A. Yes, sir.

Q. Now, then, if that is so, Mr. Bowdan, why didn't you put Murray R. Bowdan and Company, the liquor business, in the two names? A. Because when I talked to Mrs. Bowdan, who is absent from this city every other week -- she could never be there to sign any legal documents that are in our business, and I told her and I still contend and say that everything I have and everything she has is still owned jointly together, fifty-fifty between the Mrs. and myself.

Q. When did you start saying that, sir? A. From the very first date to the last time.

Q. Do you have anything in written evidence -- A. No, sir.

Q. -- that would show that prior to the filing of this suit you considered that your wife had any interest whatsoever in Murray R. Bowdan and Company, the liquor business? A. Only in conversation between Mrs. Bowdan and myself.

276 Q. Now, Mr. Bowdan, it is a fact, isn't it, that after you opened the brokerage account with Orvis Brothers in the joint name of yourself and your wife in December, 1946, that thereafter you and your wife both put considerable amounts of money in there? A. We have.

Q. And there was no record kept, was there, as to how much of your money went in and how much of your wife's money went in? A. Correct.

Q. That is correct, isn't it? A. Correct.

Q. It was the intention of both of you, was it not, to use that brokerage account with the hope to make some profit out of its manipulation? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. You did consider, did you not, that you had some skill along that line and that you could deal in stocks and make a profit? A. Yes, sir.

277 Q. And Mrs. Bowdan agreed, did she not, that she would join you in that enterprise and permit her name to be used in that joint account? A. Yes, sir.

Q. As well as yourself? A. Yes, sir.

Q. And it is a fact, is it not, that all through the years that this account was active that you put money in it, that Mrs. Bowdan put money in it, and that money was taken out of Selma's Gowns account and put in it? A. Sometimes.

Q. And at all times that that account was in existence it is a fact, is it not, that you and Mrs. Bowdan understood and agreed that it belonged to you equally, fifty-fifty? A. Yes, sir.

Q. That half of it was hers and half yours? A. Yes, sir.

Q. Isn't that correct? A. Yes, sir.

Q. That is true today, isn't it? A. Yes, sir.

Q. No dispute about it? A. Yes, sir.

278 Q. It is a fact, isn't it, that Mrs. Bowdan permitted you largely to make the decisions with respect to what stocks to buy and sell, and when? A. No, sir.

Q. Did you always confer with her? A. During the day if I got a call from the broker and he thought there was something we should purchase or sell we acted immediately without consultation.

In the evening or the next time I would meet my wife, which could have been a period of three or four days, I would speak to her of what happened during the past three or four days.

Q. And she usually approved of what you did, didn't she? A. Yes, sir.

Q. She trusted your judgment as being superior to hers? A. She trusted.

Q. And she recognized that you knew more about the stock market

than she, didn't she? A. Yes.

Q. And largely after that permitted you to make the decisions because of your superior knowledge of the stock market? A. I don't know how superior it was, but that was the arrangement.

279 Q. And what you were doing, you understood, was for the mutual benefit of both of you? A. Yes.

Q. Fifty-fifty? A. Yes.

Q. That she owned half of the account and you owned half of the account? A. Yes, sir.

Q. And you made no attempt to keep an accurate record of how much of your money went in and how much of her money went in and how much of the joint? A. It was all one money and there was a record of deposits and withdrawals.

Q. You pooled your money, didn't you? A. Yes, sir.

Q. Commingled it? A. Yes, sir.

Q. And it was the agreement between you that you hoped to build up a substantial amount of capital and income for your mutual benefit and security, isn't that correct? A. Yes, sir.

Q. Now, sir, commencing on February 28, 1950, did you commence to liquidate that brokerage account by making cash withdrawals? A. Don't put it that way, counselor; don't put your question that way. I sold stocks as I saw fit and how I wanted to.

280 Q. Didn't you, commencing February 28, 1950, start to withdraw checks payable to you or for your benefit, money from that brokerage account? A. In the final analysis it might be put your way, but that is not the thought or thinking.

If and when I wanted to sell something I sold merchandise. I started to sell at that time from the constant haggling of my wife, who made life miserable every evening to me to sell all this merchandise, or stock certificates I should have said, and from that time on as I saw an opportune time, and if the price seemed right, I would sell it.

Q. Mr. Bowdan, if you gave orders to sell stock they executed them by selling them? A. Yes.

Q. And the money they got for selling it was credited to the account? A. Yes, sir.

Q. Isn't that correct? A. Yes, sir.

281 Q. And unless somebody, either you or your wife, withdrew it, it stayed there, didn't it? A. Correct.

Q. As money? A. Yes.

Q. My question to you is this -- not about selling stock -- is it not a fact that commencing February 28, 1950, you commenced to draw out of that joint account money payable to you alone -- A. Yes.

Q. -- or for your benefit? A. Yes.

Q. That's true, isn't it? A. Yes.

Q. I show you one of the component checks constituting Plaintiff's Exhibit No. 18, which is a check dated February 28, 1950, of Orvis Brothers, payable to Murray R. Bowdan, for $2,000, and ask you if that is your endorsement? A. I endorsed it, put that into my company to make my company more solid, yes, sir.

Q. You endorsed that $2,000 check and deposited it to the account of Murray R. Bowdan and Company -- A. Yes, sir.

Q. -- which was your liquor business? A. Yes, sir.

282 Q. And you gave no part of that as such to Mrs. Bowdan, did you? A. No, sir.

Q. I now show you another check of those comprising Plaintiff's Exhibit No. 18, which is a check dated March 25, 1950, of Orvis Brothers, payable to your order, Murray R. Bowdan, in the amount of $5,260, and ask you if that is your signature and if that endorsement correctly indicates that you deposited that to the account of Murray R. Bowdan and Company? A. Yes, sir.

Q. And you gave no part of that to Mrs. Bowdan, did you? A. No, sir.

Q. I show you next a check dated August 30, 1950, being the check of Orvis Brothers and company, and being one of the component parts of Plaintiff's Exhibit No. 18, a check of Orvis Brothers and Company, payable to Murray -- A. (Interposing) I admit all that.

MR. FADLER: If Your Honor please, I think we can save time, and without swelling the record and taking the Court's time here and prolonging the hearing going over them one by one, with a little speech in between, if we take them all together.

THE COURT: Mr. Boardman thinks he has a reason for proceeding in this manner.

283 MR. FADLER: Could we understand his reason?

MR. BOARDMAN: Yes. My reason is that I want each one of these identified and the record clear as to who got the money and what was done with it, so that there will be no dispute on this record about those, because you are disputing two checks which we will have to go out and bring in evidence on.

BY MR. BOARDMAN:

Q. I show you this check dated August 30, 1950, in the amount of $2,000, payable to Murray R. Bowdan, and ask you if that is your signature? A. Yes, sir.

Q. And if the endorsement correctly shows it was deposited to the account of Murray R. Bowdan and Company? A. Yes, sir.

Q. Did you give any part of that to Mrs. Bowdan? A. There might have been a time when I received these checks that I did give some money to her if and when she needed it.

Q. It was deposited at that time and you gave her nothing, did you? A. At that moment, no, sir.

Q. I next show you from the same Plaintiff's Exhibit No. 18 check dated September 28, 1950, of Orvis Brothers payable to Murray R. Bowdan in the amount of $1,365, and it shows on the back that it is rubber stamped, or stamped in printing, for deposit only in the Lincoln National Bank, Murray R. Bowdan and Company. A. Yes, sir.

284 Q. I will ask you, sir, if that endorsement correctly indicates that that $1,365 was deposited in your account -- A. Yes, sir.

Q. -- known as Murray R. Bowdan and Company? A. Yes, sir.

Q. And it is true, is it not, that you gave no part of that to Mrs. Bowdan? A. Yes, sir.

Q. From the same Plaintiff's Exhibit No. 18, I show you check dated October 6, 1950, of Orvis Brothers and Company, payable to Murray R. Bowdan, in the amount of $5,000, and ask you if that is your endorsement and if the endorsement underneath correctly shows that the amount of that check was deposited in the account of Murray R. Bowdan and Company? A. Yes, sir.

Q. It is true, is it not, that Mrs. Bowdan received no part of that? A. At that time, perhaps.

Q. I next show you from Plaintiff's Exhibit No. 18, check dated October 17, 1950, of Orvis Brothers and Company, payable to Murray R. Bowdan in the amount of $10,000 and ask you if that is your endorsement? A. Yes, sir.

285 Q. And that the endorsement underneath correctly shows -- A. Yes, sir.

Q. -- that it was deposited in your account under the name of Murray R. Bowdan and Company? A. Yes, sir.

Q. It is true, is it not, that no part of that was given by you to Mrs. Bowdan? A. That's right.

Q. I next show you from the same Plaintiff's Exhibit No. 18 check dated November 13, 1950, of Orvis Brothers and Company payable to Murray R. Bowdan in the amount of $13,000, and ask you if that is your endorsement? A. Yes, sir.

Q. And that the endorsement underneath correctly shows that the full amount of that check was deposited in your account known as Murray R. Bowdan and Company? A. Yes, sir.

Q. It is true, is it not, that no part of that was given to Mrs. Bowdan? A. Perhaps, and perhaps not.

286 Q. From the same exhibit, Plaintiff's Exhibit No. 18, I show you check of Orvis Brothers dated September 6, 1951, payable to Murray R. Bowdan in the amount of $5,778.52, being a check of Orvis Brothers and Company, and ask you if that is your endorsement on there and if the stamp underneath correctly shows that that was deposited in your account known as Murray R. Bowdan and Company? A. Yes, sir.

Q. And it is true, is it not, that you gave no part of that to Mrs. Bowdan? A. Perhaps.

Q. I next show you from Plaintiff's Exhibit No. 18 check of Orvis Brothers & Co., dated December 11, 1951 payable to Murray R. Bowdan in the amount of $127.35, and ask you if that endorsement on there is yours? A. Yes, sir.

Q. And that writing underneath indicates that you cashed that and got cash for it, isn't that correct? A. No. It should have been deposited. There is no mark of cash, when I handled this. That was deposited in the proper manner.

Q. It was deposited in the account of Murray R. Bowdan and Company? A. Yes.

Q. And no part of that was given to Mrs. Bowdan? A. Perhaps.

287 Q. This last check for $127.35 closed out the account. That removed all the balance, didn't it? A. Yes.

* * * * *

BY MR. BOARDMAN:

Q. Now, Mr. Bowdan I show you Plaintiff's Exhibit No. 19, which is the check of Orvis Brothers and Company, payable to Murray R. Bowdan, in the amount of $700, and I show you the writing on the back which says, Murray R. Bowdan, and then underneath Murray R. Bowdan and Company, and I believe, sir, that after talking with your counsel you said that that was not your writing. A. I still say it was not my writing.

288 Q. Yes, sir, and I agree that it is not your writing. Do you admit, sir, that whatever the writing may be that that check was deposited to the credit of Murray R. Bowdan and Company in the Lincoln National Bank? A. It probably was credited to Murray R. Bowdan and Company.

MR. FADLER: Your Honor, if the witness doesn't know now -- I mean he is coming pretty fast at him over there, and he might not know whether it was or not. That was a long time ago.

MR. BOARDMAN: I grant you, Your Honor, if we can't be practical we will have to prove this and we will, but may I ask a few questions?

BY MR. BOARDMAN:

Q. You recall, do you not, that both you and I, when we were looking at these checks that I had up here before, on some of them there was stamped the words Murray R. Bowdan and Company? A. There is a rubber stamp they have to use other than when I endorse them, but that is not my handwriting.

Q. No; that rubber stamp is not yours. A. No, but I identify it as being mine.

Q. But it is for some of your clerks to make deposits for you. A. The bookkeeper, but if Murray R. Bowdan and Company did receive credit I acknowledge it as such.

289 MR. BOARDMAN: I will ask you, Mr. Fadler, if you will stipulate that this check for $700 dated May 10, 1950, being plaintiff's Exhibit No. 19, was in fact deposited to the credit of the account of Murray R. Bowdan and Company?

* * * * *

THE WITNESS: It was deposited and it probably could have been signed.

MR. FADLER: I have no objection to it. You have no objection to it?

THE WITNESS: No.

MR. BOARDMAN: In order to make certain we will show him the statement.

MR. FADLER: The statement of Murray R. Bowdan and Company?

MR. BOARDMAN: No.

BY MR. BOARDMAN:

Q. Mr. Bowdan, I show you a page of the bank statement of Murray R. Bowdan and Company and call your attention to the fact that on the date of May 10, 1950, there was deposited to the credit of that account the sum of $700, and that $700 is the amount of this check payable to you -- A. If it says so, it's all right.

290 Q. -- of May 10, 1950. A. That's all right if it says so.

MR. BOARDMAN: Therefore, Your Honor, may I ask Mr. Fadler if he and his client will stipulate that this $700 check was deposited to

the account of Murray R. Bowdan and Company on May 10, 1950?

MR. FADLER: No, Your Honor, we won't stipulate to that, because counsel knows that we don't know whether it was or not, unless Mr. Bowdan wants to remember it. Do you remember this?

THE WITNESS: I don't remember it specifically.

MR. FADLER: You don't remember this going in?

THE WITNESS: If it says so and it is there, it should have been.

MR. BOARDMAN: We will prove it.

MR. FADLER: I mean that is the normal procedure. We can let it in for whatever it is worth.

THE COURT: We can hear the proof.

BY MR. BOARDMAN:

Q. Now, Mr. Bowdan, I show you Plaintiff's Exhibit No. 20 for identification. This one, Your Honor, has not yet been admitted in evidence; it is only identified.

291 THE COURT: That is true of Exhibit 19 also.

MR. BOARDMAN: No, it was admitted.

THE COURT: Oh, it was?

MR. BOARDMAN: Yes. The witness who produced it produced it as a check they had paid to Mr. Bowdan, and Your Honor received it subject to his contention that it was his not his signature.

BY MR. BOARDMAN:

Q. Going back to Plaintiff's Exhibit No. 20 for identification, which is a check of Orvis Brothers and Company dated October 6, 1950, in the amount of $11,608.44, payable to the order of the American Security and Trust Company, do you have any knowledge of that? A. I don't know anything about this, sir. I don't recall it, and I can't say. I don't know what it is.

Q. I will ask you specifically, Mr. Bowdan, if it is not a fact that on October 6, 1950, you owed to the American Security and Trust Company a note or notes, the total amount of principal and interest of which due that date was $11,608.44, and that you used this check to pay what you owed to the bank on that note? A. If I see that check --

Q. I am asking if you have any memory that you got a check from Orvis Brothers. A. No, sir.

292 Q. And had it delivered to the American Security and Trust Company -- A. No, sir.

Q. -- to pay -- A. No, sir.

Q. -- the balance of principal and interest due on a note or notes held by the bank and signed by you? A. No, sir.

Q. You deny that, sir? A. I don't remember the first thing about this transaction, sir.

Q. Do you remember borrowing money on your note from the American Security and Trust Company? A. What date and when?

Q. Prior to October 6, 1950? A. I don't recall.

Q. You have borrowed money there on your note, have you? A. Perhaps at some time, but I don't remember what amount or when and where.

Q. And you can't remember. A. Not from that document.

Q. You can't remember borrowing $11,608.44 on your notes? A. No, sir, I don't recall it.

293 Q. It is a fact, is it not, Mr. Bowdan, that during the year 1950 and 1951 you did withdraw from the Orvis Brothers Account all the money that was in it and all the money realized from the sale of the securities in it, and that you received it all yourself? A. Yes, sir.

Q. In one form or another? A. Yes, sir.

Q. That is correct, is it not? A. Yes, sir.

Q. And it is also true that you did not account to your wife, Hilda Bowdan, for any of that, did you? A. With the exception we might have -- we might have loaned some money to Selma's during that period.

Q. But you admit, do you not, that you did not account -- A. I don't have to.

Q. -- to your wife. A. I don't have to account. I don't have to account for anything.

Q. You admitted a little while ago, did you not -- A. But I still don't have to account to her.

Q. -- that that account belonged to you fifty-fifty. A. Yes, but I don't have to account to her.

294 MR. FADLER: I object. I don't think the witness understood the difference between joint and fifty-fifty. This is vague language and we are mixing it up.

MR. BOARDMAN: That is his own language. He said fifty-fifty, she owned half and he owned half.

THE COURT: Yes.

BY MR. BOARDMAN:

Q. You did say that, didn't you? A. Yes.

THE COURT: The objection is overruled.

BY MR. BOARDMAN:

Q. Did you give her her half? A. No, sir.

Q. Prior to February 1951, did you tell your wife that you were withdrawing money from the Orvis Brothers account? A. Did I tell her?

Q. Yes. A. What was the conversation about, sir?

Q. Well, at any time? Did you any time prior to February, 1951, ever tell your wife that you had withdrawn -- A. She never had any interest in any of those things. I used to do as I saw fit, and as I told you earlier this afternoon we would get together and we conversed about these things. I told her the happenings and she told me. There was no --

295 * * * * *

BY MR. BOARDMAN:

Q. Mr. Bowdan, during the intermission your attorney and I, in your presence, added up the checks in Plaintiff's Exhibit No. 18, which were written between February 28, 1950, and November 13, 1950, and which does not include the two that are still in dispute, and does not include those written in 1951, and as verified by your attorney the total amount of those six checks not in dispute for 1950 is $38,625.

THE COURT: How did you get that?

MR. BOARDMAN: By adding up.

THE COURT: $38,000?

MR. BOARDMAN: $38,625, which includes, Your Honor, not all of

these checks but six that were written in 1950 which are not in dispute.

THE COURT: Well, Plaintiff's Exhibit No. 18 includes more than six.

MR. BOARDMAN: Yes, it does, and in this question I am not including all of them in Plaintiff's Exhibit No. 18, only those written in 1950.

296 THE COURT: Oh, yes.

MR. BOARDMAN: And there is a reason for that which will appear, is why I am putting it in that form.

THE COURT: That's all right.

MR. BOARDMAN: It does not include the total amount.

THE COURT: That's all right; I just didn't understand it.

BY MR. BOARDMAN:

Q. Mr. Bowdan, did you at any time prior to February, 1951, tell your wife that during the year 1950 you had withdrawn from the Orvis Brothers account $38,625? A. I believe that was about the time that she insisted I sell the stock, and I started to sell it. She knew about it.

THE COURT: No. Answer his question, please.

THE WITNESS: I believe so.

BY MR. BOARDMAN:

Q. Did you at any time prior to February, 1951, tell your wife that in 1950 you had withdrawn from the Orvis Brothers account $38,625? A. Not in those words. I didn't know the amount, but whatever I drew and whatever I sold or bought I did tell her. She knew about that.

THE COURT: Ask the question some other way and let's find out.

297 BY MR. BOARDMAN:

Q. Did you tell her before February, 1951, that you had withdrawn $38,625? A. I did tell her I sold a lot of certificates and she knew about it.

Q. Did you tell her you had drawn the money out? A. I told her I sold the things.

THE COURT: That isn't answering the question. Answer his question.

THE WITNESS: The question whether I told her -- well, I told her that I sold --

THE COURT: Wait. You are not even answering the question; you are making a statement. Put the question again. Now, you listen to the question and answer it.

BY MR. BOARDMAN:

Q. Prior to February, 1951, did you tell your wife that you had withdrawn $38,625 from Orvis Brothers Account?

MR. FADLER: I object, Your Honor, because he would have to tell him that he had withdrawn the whole amount because these accounts weren't drawn out at one time; they were drawn out at different times.

THE COURT: Objection overruled.

A. On occasion when we spoke I told her I sold some certificates, and when I received a check I told her I received a check, and I told her what I did with the check.

298 THE COURT: Now, you have made your speech, answer the question.

THE WITNESS: That's the only way I can answer the question.

BY MR. BOARDMAN:

Q. Did you tell your wife prior to February, 1951, that during 1950 you had withdrawn from the Orvis Brothers account $38,625? A. I never told her that way, no, not that grand total way, no, sir.

Q. Did you tell her every time you wrote one of these checks? A. She knew about it.

Q. Did you tell her? A. Yes, I told her.

Q. Each time? A. Yes, sir.

Q. Did you ever tell your wife that on May 10, 1950, you had withdrawn $700 from the Orvis Brothers account? A. I might have and I might not have; I don't remember.

Q. Did you ever tell your wife at or around the time that you did it, if you did do it, that on October 6, 1950, you had caused a check to be written for $11,608.44 -- A. I don't recall anything about that matter.

299 Q. -- and had it paid to the American Security and Trust Company? A. I don't recall that at all.

Q. So you didn't tell her, is that right? Or you did tell her? A. If I didn't know it I couldn't tell her, sir.

Q. Do you have any memory of having told her? A. I don't remember the incident at all.

Q. Now, sir, do you recall an occasion in February, 1951, when your wife called you from New York City and advised you that you ought to sell certain stocks? A. We spoke about that.

Q. Do you remember that conversation? A. Not clearly this second, but I might; it might come to me.

THE COURT: I didn't hear the answer.

MR. BOARDMAN: He says he doesn't recall it clearly at this second, but it might come to him.

BY MR. BOARDMAN:

Q. I ask you, sir, to see if you can make it come to you. A. I am trying.

Q. Are you trying now? A. I am.

300 MR. FADLER: Will Mr. Boardman repeat that question?

BY MR. BOARDMAN:

Q. Do you remember that in the month of February, 1951 your wife phoned you from New York City, you being here in Washington, and advised you on the basis of information she said she obtained in New York that you ought to sell certain stocks because of the favorable condition of the market? A. Yes, I recall that.

Q. You do recall it? A. Yes.

Q. Didn't you on that occasion tell her that you already had sold the stocks and had taken out the money? A. If it was sold prior to our conversation I did tell her that; and most of that heavy stuff that was sold was at her instigation.

Q. Well, as a matter of fact, now the date that she called you from New York to advise you to sell the stock you had already sold it, hadn't you? A. If that is the date it was sold.

Q. And there wasn't much left down there, was there? A. Whatever it was.

Q. If you had told her about selling and withdrawing did you remind her that you had already sold that sock and she knew it? A. Well, I told

her that evening the certificates were sold.

301 Q. As a matter of fact, Mr. Bowdan, in February, 1951, all that was left in that account is what you later drew out in the form of these two checks, one for $5,578.52 and one for $127.35? A. I think so.

Q. So that when you had the conversation with her in February 1951 you had gotten everything out of that account except what is shown later by these two checks of less than $6,000, isn't that right? A. If it was so, it is so.

Q. And didn't you in that telephone conversation with your wife, when your wife was in New York, tell her that you had taken out $60,000? A. No.

Q. You didn't tell her that? A. Whatever it was, whatever the proceeds were, whatever we sold, or whatever I sold, I sold. The record talks for itself, sir.

Q. When she came back from New York in February, 1951, isn't it a fact she demanded to know of you why you had taken the money out of the account? A. No, sir; no, sir.

Q. Did you have any difficulty about it? A. No, sir.

302 Q. Did there come a time after that, Mr. Bowdan, when she said she had been down to Orvis Brothers and found that everything was gone except about $9,000 worth of stock? A. No. Later on we had a conversation but she didn't say what you just said then.

Q. What did she say? A. She told me she was down there to see what was going on and to see what she could do. This was a joint account and any time I needed to buy or sell or needed money for any purpose I bought or sold at my own discretion.

Q. What did she say? You said there was a conversation but not like I said. A. She wanted to know -- she tried to investigate all this thing, and that's all.

Q. She was looking into it, wasn't she? A. Yes.

Q. She was upset by it, wasn't she? A. Probably.

Q. Well, you know she was, don't you? A. No.

Q. But she was investigating, wasn't she? A. She had other

motives.

303 Q. Well, did she come home and tell you she had been down to Orvis Brothers and found -- A. That happened months and months later that she did that.

Q. When did it happen? A. When did what happen?

Q. That was months and months later she came home and told you. A. This was I believe after the suit was instituted. It was the first time that I learned that she went down there.

Q. Mr. Bowdan, I didn't ask you that or anything resembling that. You were telling me about a conversation that you had with your wife. A. That's right.

Q. In which she said she had been down to Orvis Brothers and found out -- I am not talking about any suit being filed. A. When did she find out?

Q. I am asking you when she had this conversation. A. I don't know when she went down.

Q. Will you please listen to my question? I am going to put it again. After February, 1951, when your wife called you from New York City and you told her that you had drawn out around $60,000 worth of money, was there any -- A. I didn't mention the money, sir. I said I sold stock.

304 Q. You told her you sold stock? A. That's what it was.

Q. You didn't tell her you had drawn the money out then. Did there come a time after that, while you were still living together, that your wife told you she had been down to Orvis Brothers and had learned that you had drawn out most of the money? A. No, sir, I don't recall it at that time, no, sir.

Q. No conversation at all? A. Not at that time, no, sir.

Q. Was there at some time such a conversation? A. Much later on, yes.

Q. Between you and your wife? A. I believe so.

Q. Well, do you know so? A. Let me think for a moment. I don't recall it clearly, but she asked me I believe what I had done with my

money and I told her I had invested it in my business.

Q. When was that? A. I don't recall.

Q. It was while you were still living together? A. Yes.

Q. And that's when she told you she had gone down and found it was mostly all gone? A. She hadn't gone down then. She must have gone down much much later, according to my recollection; she didn't go down at that earlier period.

305 Q. You said it was much later and while you were still living together? A. Yes.

Q. I am talking about your time. A. What about your time?

Q. The time you say your wife told you she found out -- A. That's what I am trying to get at. I can't determine the time that this happened. That's what I am trying to tell you.

Q. How long before you left the house was it? A. Better than a year to the best of my recollection.

Q. It was a year before you left the house? A. I believe around that time.

Q. And you left the house the latter part of 1951? A. Yes.

Q. So that it was in the latter part of 1950 she told you? A. About that.

Q. You see where we are getting. How about that telephone conversation we are talking about that happened in February 1951?

306 MR. FADLER: Your Honor, I don't see the materiality of this telephone conversation and dragging this out. This is a joint account. Both parties can draw from the account. What difference does it make?

THE COURT: Objection overruled.

BY MR. BOARDMAN:

Q. Do you have any specific information you care to give me as to when this conversation occurred? A. I don't know anything about that more than I just said.

Q. I will ask you if after February, 1951, your wife didn't tell you that she had been down to Orvis Brothers and found that you had taken everything out except approximately $9,000 worth of stock? Answer that

Yes or No. A. I would have to say No.

Q. I ask you, sir, if at that time your wife asked you to promise that you wouldn't take the rest of it out? A. No, sir, never had such a conversation to my knowledge.

Q. Did anything like that happen? A. No, sir.

Q. I will ask you if in September 1951 your wife told you that she had found out that you had taken more money out? A. I don't recall that, sir.

Q. We have already been over this, and I show you again the check dated September 6, 1951, payable to your order in the amount of $5,778.52 -- A. I may have received the check at that particular time, but we didn't talk about that, sir.

307 Q. And that did close the account out? A. That's right. I admit that, sir.

Q. And that took everything out of that account except -- A. If that's what it is; I am not arguing about it.

Q. Using this as a date, wasn't it after September 6, 1951, that your wife told you she had found out that you had taken the rest of the money out down there? A. Never had that kind of a discussion.

Q. And isn't it a fact, sir, that you and your wife had considerable discussion about your having taken all the money out of that joint account? A. No, sir.

Q. You were arguing in September 1951, were you? A. Not about taking out the money, sir.

Q. What were you arguing about? A. As I recall it, she was very ill, very picayunish, very argumentative, and ordered me out of the house and made life very miserable for me night after night, and she insisted that I sell these stocks.

Q. When, in September? A. All the time back for a year.

Q. Sir, I am asking you about September, 1951. A. I don't recall; I don't remember.

308 Q. She wasn't asking you to sell stock in September, 1951, was she? A. She knew they were sold.

Q. They were all gone then, weren't they? A. That is why I needed a little help from you on the dates.

Q. There was a day, wasn't there, that you called up her brother Irving and asked him and his wife to come over there to the house where you were living with your wife and your wife's parents? A. Yes, sir.

Q. And you and your wife had been having a quarrel before that, hadn't you? A. Yes, sir.

Q. And wasn't it over your having taken out the money? A. No, sir.

Q. And when Dr. Irving Lichtman and his wife arrived did you state to them that you wanted them to be witnesses to the fact that you were leaving your wife? A. No, sir.

Q. That did not happen? A. No, sir.

Q. Did anything like it happen? A. No, sir.

309 Q. What did you say, if you didn't say that? A. I asked them over to tell their sister to act normal and to get to a doctor so that she can get well.

Q. Is that what you told them when they got there? A. Yes, sir.

Q. Told Dr. Irving Lichtman, the dentist -- A. Yes, sir.

Q. -- to take his sister to a doctor? A. Yes; to see that she goes to a doctor. I recommended that she go to a doctor to get medical treatment.

Q. Yes; and that is all you said? A. That is right. We were just talking on that score, yes, sir.

Q. Were you there when Dr. Irving Lichtman and his wife went out with your wife in the automobile? A. Yes.

Q. Did you see them leave? A. Sure, yes, sir.

Q. Did you, after they were gone, call up Dr. Paul Lichtman, at his home? A. I don't remember that. I heard him say that, but I don't remember that.

Q. You heard him say that. You heard him say that you told him that you were leaving your wife? A. I heard him say that, but it wasn't so.

310 Q. You didn't say that? A. No, sir.

Q. You did leave that same day? A. I did not, sir. I did not, sir. Absolutely not.

Q. All right. You tell me the day you did leave? A. I believe it was a few weeks later. It was on a Monday night that her father and I were sitting watching the television show; her mother ordered her upstairs to bed right early, about 8:00 p.m.; and the mother said to me -- called me in the back room; called me into the kitchen, where the television was, and said to me: Hilda is getting more sick every day and I wish you would get out of here.

The next day when I went to work, I reported for work and left the house only at their instance, and nagging, and everything else, making life unbearable.

Q. What day was that, sir? A. It had to be a weekday. It had to be -- I don't remember the exact day, but it was one day during the week, because we only work --

Q. What month was it in? A. I don't remember. It may have been that month or later. Maybe in November -- that month; but I never left the house that day.

311 Q. You mean the day that Dr. Irving Lichtman was there? A. Yes, sir.

Q. And the day you called up Dr. Paul Lichtman? A. Yes, sir.

Q. It is true, is it not, that you did call Dr. Paul Lichtman the same day Dr. Irving and his wife came to the house? A. I said I might have. If I did, I don't recall. But I did not leave. I remember this incident now; but I never left the house that time.

Q. Where did you go, when you did leave? A. When I left at a later date?

Q. Where did you go? A. That morning, I reported to work, and at five o'clock or during the day, I figured there is no place for me to come to, so I called a friend of mine, and I moved into his apartment.

Q. Who was that friend? A. Mr. Maurice Brown.

Q. Where was his apartment? A. 1426 Saratoga Avenue, N. E.

Q. Is he in the District at the present time? A. Yes, sir.

312 Q. Does he have any record of the date you came there? A. I don't know if he has a precise date, but he can probably tell you.

Q. You paid him while you lived there? A. Yes, sir.

Q. By check? A. I don't remember by check or by cash. I did pay him.

Q. How long did you live there? A. I believe anywheres between five and six months.

Q. Now, sir, let's go back to this DWG Cigar Company stock. It is a fact, is it not, that as of the present time, you have in your possession a certificate of 100 shares of stock of the DWG Cigar Company? A. I do.

Q. Which is in the name of your wife, Hilda Bowdan? A. Yes, sir.

Q. And you have had that ever since or before the time that you ceased living with your wife? A. Yes, sir.

Q. It is a fact, is it not, that that belongs to her? A. No, sir.

Q. Who does it belong to, if it doesn't belong to her? A. It was a part of the joint account. I put it in her name.

313 Q. You bought it before you came to the District from New York; didn't you? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And you had it issued to her in her name; didn't you? A. Yes, sir.

Q. And hadn't you, prior to that time, purchased a certificate of 100 shares of the same stock and had it issued in your name? A. It wasn't prior; it was later, I believe.

Q. Later? A. Later.

Q. So that there was a time when there was 100 shares in your wife's name and 100 shares in your name? A. Yes, sir.

Q. And you caused 100 shares to be placed in your wife's name because it was her property; didn't you? A. No, sir; it wasn't her property. I bought it just because I wanted to. I was fond of her; and I wanted to make her a present. I put it in her name.

Q. You gave it to her? A. I didn't give it to her. We held it. We used it many times for collateral for loans; we kept it in the account.

When we sold out, I believe that was when I had it back, or I took it back prior sometime, and I kept it, and still have it.

314 Q. The one issued in your name was yours; wasn't it? A. Yes.

Q. And you later sold that one; didn't you? A. Yes, sir.

Q. And you can't sell hers because it is in her name and not yours; isn't it? A. I didn't want to sell it.

Q. Now, sir, do you deny today that that is her property? A. In a sense, it isn't and it is.

Q. Now, which is it? A. I don't know.

Q. You don't know? A. No. There are other things that she has that I would like to get back; and I don't know if they are hers or mine.

Q. Isn't it a fact, sir, that you have heretofore stated, specifically, when I took your deposition on December 30, 1954 -- I will read it if we have to. A. You don't have to.

Q. Do you remember stating that that was her certificate of stock? A. I may have said so at that time.

315 Q. And you said you wouldn't give it to her because you were going to hold onto it until she made a settlement to your satisfaction? A. Not to my satisfaction.

Q. Until you got what you wanted? A. No, sir; until we settle this matter entirely.

Q. Do you make any claim today, sir, that that 100 shares belongs to you? A. As I answered before, it can be, and it can be on the other side.

Q. Suppose you answer. Do you claim it now? A. I don't know. I don't know.

Q. You don't know whether you claim it is yours or not? A. That is right.

Q. Can we have it? A. No, you can't have it now until this case is finished, sir.

Q. But you don't claim it is yours? A. It is mine and it isn't. It is half mine; let me put it that way.

Q. Half yours? A. Yes, sir.

Q. Was the one you sold in your name half hers? A. Yes, sir; yes, sir.

316 MR. BOARDMAN: I am now referring, Your Honor, to the Defendant's deposition, taken before David Spatzer, December 30, 1954, particularly at Page 50.

BY MR. BOARDMAN:

Q. I ask you now, sir, if you recall that I asked you this question and you gave me this answer:

"Question: Now, sir, do you own some shares of stock of the DWG Cigar Corporation? Answer: I don't."

Do you remember saying that on December 30, 1954? A. If it is so that I answered that way, then it is so that I answered that way. I am a little bit vague about the thing.

Q. Then I asked you this:

"Question: Do you have any certificates of stock in your possession of the DWG Cigar Corporation? Answer: I have one."

Do you remember making that answer? A. Yes.

Q. "Question: For how many shares? Answer: It is $100."

A. One hundred shares.

Q. "Answer: One hundred shares."

MR. FADLER: I object to that. He read it $100.

317 MR. BOARDMAN: I corrected myself. The answer is:

"It is 100. It is the old issue, but it is of today's value 200. It has never been transferred."

BY MR. BOARDMAN:

Q. You gave that answer and that is correct; isn't it? A. Correct, correct; it is correct.

Q. "Question: That is, they have called for the surrender of the old certificates for issuance of new ones; haven't they? Answer: Yes, I believe they did. It is ten years ago, or so, and I let it remain always that way."

That is your answer; isn't it? A. Yes, sir.

Q. "Question: In whose name is that certificate? Answer: This

particular certificate is in the name Hilda L. Bowdan."

Did you give that answer? A. Yes, sir.

Q. "Question: Do you know when that certificate was issued? Answer: Oh, I think about twelve years ago, ten, twelve years ago, or more, to my best recollection."

Correct? A. Correct.

Q. I am leaving out some questions and answers. I expect some of those did not help. I am coming down to something that does. Page 52:

318 "Question: And then this particular certificate that you now have was issued in the name of your wife? Answer: Yes, I did that.

"Question: It is her property; is it not? Answer: Yes and no.

"Question: Will you explain that further? Answer: Well, as I have said to you before, everything, as I feel, that both of us have is half and half, and when we make a settlement or an adjustment, we will take that all into consideration."

Do you remember giving those answers? A. Yes, sir.

Q. Then I asked you this, the next-to-the-last question on that page:

"Question: And it was understood, was it not, between you and your wife, that one of them..." --

MR. BOARDMAN: I will have to go back, Your Honor.

"Question: At the time that this certificate in the name of your wife in the DWG Cigar Corporation was issued in the original amount of 100 shares, did you at that time have the certificate that you had previously obtained in your own name? Answer: Yes, sir."

319 BY MR. BOARDMAN:

Q. Do you remember giving that answer? A. If the answer is there, I gave it in that way at that time.

Q. "Question: And it was understood, was it not, between you and your wife, that one of them belonged to you, the one in your name belonged to you and the one in her name belonged to her? Isn't that correct?

And your answer was: "Yes, sir." A. I answered that way.

Q. Did you state that on December 30, 1954? A. I am not denying that.

Q. Then I asked you on Page 53:

"Question: And you had that certificate issued in her name because you wanted it to be hers; did you not? Answer: Yes."

Do you remember giving that answer? A. It is all right; I don't deny that.

Q. And then this question:

"Question: And you considered that it was her property; did you not? Answer: Yes."

Did you give that answer? A. If it so states; so it is.

320 Q. In view of those answers, that you gave on December 30, 1954, do you still contend, sir, that that certificate is not the property of your wife?

MR. FADLER: I object, Your Honor. I think that calls for a conclusion of law here. We come into legal and equitable titles; and I think he is not qualified to answer that.

THE COURT: Objection overruled. He may answer it.

THE WITNESS: Well, it is like a few things. We start to do something; we don't finish it. I started to do that, and it was in my mind when I purchased it that way, but I don't feel that way today.

Q. In other words, you wish you hadn't given it to her; is that what you mean, sir? A. Yes, sir.

Q. You wish you hadn't given it to her? A. Yes, sir.

Q. After you left in 1951, after you stopped living with your wife, did you ever contribute towards the support of your son, prior to the time he was twenty-one years of age? A. Yes, sir.

Q. When did he become twenty-one years of age, sir? A. He was born May 26, 1933 -- would be about '51, about 1951.

321 Q. That he became -- A. Born 1933, twenty-one, would be in 1954. May 26, 1954, he became twenty-one years of age.

MR. FADLER: We can add that up, Your Honor.

MR. BOARDMAN: That is right. We agree, May 26, 1954, he became twenty-one.

THE WITNESS: That is so, twenty-one years of age.

BY MR. BOARDMAN:

Q. Your Defendant's Exhibit No. 4, a bunch of checks commencing "5-26-55," that was your son's twenty-first birthday? A. This is '55, sir. That would be twenty-two.

Q. Do you have any cancelled checks, sir, for anything that you ever contributed towards the support of your son prior to his twenty-first birthday? A. I believe I can find some of those, yes, sir.

Q. But you haven't been able to? A. I haven't looked for them, sir.

Q. You haven't looked? A. No, sir.

Q. You just looked for the recent ones? A. My bookkeeper changes, and the one whom I presently employ is with me not quite two years; and I told her to go back as far as she can with her records to pick out any checks.

322 Q. You have all your cancelled checks; haven't you? A. I should have them, yes, sir.

Q. You can pick them out; can't you? A. I hope so.

Q. You didn't try before today to find anything before he was twenty-one? A. I tried to get all I could, but that is all the girl could get for me at this time.

Q. Do you recall the time your son was operated on in New York City? A. Yes, sir.

Q. Do you know his medical and hospital expenses were $3,000? A. No, sir.

Q. Did you know what they were? A. No, sir.

Q. Did you pay them? A. No, sir.

Q. He wasn't twenty-one then; was he? A. He was under twenty-one then, that was correct, sir. Would you like to finish some of that questioning, sir? Finish the other line of it?

Q. Sir? A. Is that all you want to ask on it.

323 Q. I will ask the questions, sir.

MR. FADLER: If he wanted to clarify it, Your Honor, I think he ought to let him clarify his answer.

MR. BOARDMAN: I have no objection. He was asking me if I wanted to ask any more questions.

THE WITNESS: I can't talk until I get a question. If I can talk, I would like to say something.

MR. BOARDMAN: If Your Honor has no objection, I have none.

THE COURT: I am here to listen.

BY MR. BOARDMAN:

Q. Go on. Suppose you say what you want to say. A. When I was notified of this operation, I went up there to make my boy as comfortable as possible. My mother and sister were there daily, to assist him, make him comfortable; and my wife was again acting up and wouldn't even say, hello. Just as mean and miserable as could be. I drove her home to her hotel one evening and I asked her to have dinner with me. She said, no. She just jumped out of the car; ran up to her hotel. Never cared to talk to me. I couldn't do anything that I wanted to.

Q. So you paid nothing for the boy? A. I knew nothing; couldn't do anything; yes, sir.

324 Q. Mr. Bowdan, were you at one time a trustee for money belonging to your son during his minority in the National Bank of Washington? A. Not to my knowledge, sir.

Q. Specifically, I will ask you if in 1948, 1947, 1946, and prior thereto for some time, there was an account in the National Bank of Washington, No. D-6874, in the name of, "Master Newton Doran Bowdan," under the control of Murray R. Bowdan and Mrs. Hilda L. Bowdan? A. I don't remember that at all, sir.

Q. You don't remember that at all? A. No, sir.

Q. Do you have any memory, sir, that you could draw checks and control that money? A. I don't remember.

Q. Do you deny, sir, that in the years 1946, '47, and '48, you withdrew approximately $7,000 of that boy's money? A. Yes, sir; I deny it.

Q. You deny it? A. Yes, sir.

Q. Did you write withdrawal slips? A. I don't recall anything.

You present them to me, and I will answer you.

325 Q. You can pretty well remember if you took $7,000 of your minor son's money out of a trust account; couldn't you? A. I still say, I deny it. I don't know anything about it. I don't remember anything about it.

Q. Do you remember that there was such an account at the National Bank of Washington? A. I don't even remember. I do not remember any such account. Maybe Mrs. Bowdan put it in in her own name.

Q. Mrs. Bowdan put that money in there for the boy; didn't she? A. I don't know. I can't say, yes, or, no, when I don't know.

Q. I will ask you specifically, did you on May 17, 1946, over your signature, withdraw from that -- A. I do not remember.

Q. Suppose you let me finish the question. -- on May 17, 1946, withdraw to your own use $1,565.38? A. I deny that.

Q. Do you deny that on May 27, 1946, over your signature, you withdrew to your own use $500? A. I deny that.

Q. Do you deny --

MR. FADLER: I object, Your Honor. What has this got to do with Mrs. Bowdan and her claims? I don't understand. I don't see the materiality of this. I think it is immaterial.

326 THE COURT: Objection overruled.

BY MR. BOARDMAN:

Q. Do you deny that on June 12, 1946, over your signature, you withdrew from the boy's money in the National Bank of Washington $557? A. I don't remember anything like that.

Q. Do you deny it? A. Yes, sir.

Q. Do you deny that on September 5, 1946, you withdrew from the boy's account in the National Bank of Washington over your signature to your own use $2,769.38? A. I deny that, sir.

Q. Do you deny that on January 16, 1947, you withdrew from the boy's account in the National Bank of Washington over your signature and to your own use $800? A. I deny that, sir.

Q. Do you deny that on May 14, 1948, you withdrew from the

National Bank of Washington from the boy's account over your signature for your own use $700? A. I deny that, sir.

Q. You deny you withdrew any of it? A. Yes, sir.

Q. And you deny any knowledge of any such account? A. I deny any knowledge of such account.

327 MR. BOARDMAN: Very well, sir, no further questions.

MR. FADLER: Mr. Bowdan, directing your attention to the --

MR. BOARDMAN: Excuse me, Your Honor. I wish to amend my questions. I have made an error.

BY MR. BOARDMAN:

Q. During the times I mentioned, when I referred to the National Bank of Washington, was there an account of money belonging to your son in the Hamilton National Bank? A. I answer you again, I do not recall this.

Q. And if I amended every question I asked you, where I used the name, National Bank of Washington, and substituted Hamilton National Bank -- A. I would answer you the same way.

Q. -- would your answers all be the same? A. Yes, sir.

MR. BOARDMAN: I won't go through it again. I made a mistake. The National Bank of Washington, as Your Honor knows, has consolidated and taken the Hamilton National Bank in. That was my error. It is now the National Bank of Washington.

REDIRECT EXAMINATION

BY MR. FADLER:

* * * * *

329 Q. Did you authorize as a shareholder or as the shareholder of Selma's, Inc. any salary for your wife from 1942 to '51? A. No, sir.

Q. Directing your attention to September of 1951, did you have any arguments with your wife about the Orvis Brothers' account, or the sale of stock prior to that time? A. No, sir.

Q. Was there any bitterness between you and your wife about that? A. No, sir.

Q. Did you and your wife separate and did you leave your wife --

A. No, sir.

Q. -- on your own account? A. No, sir.

Q. Why did you leave your wife in the fall of '51?

MR. BOARDMAN: I object. That is repetition. He testified to all this on direct.

330 THE COURT: Yes.

* * * * *

BOYD B. IMES

was called as a witness by and on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

331 DIRECT EXAMINATION

BY MR. FADLER:

* * * * *

Q. What is your position, Mr. Imes? A. Clerk, Recorder of Deeds.

* * * * *

Q. Did you respond to a subpoena here this afternoon? A. Yes, sir.

Q. Have you brought records with you concerning a corporation known as Selma's, Inc.? A. I have.

Q. Have you come in your official capacity of clerk for the Recorder of Deeds? A. Yes, sir.

Q. Now, is there recorded in the Recorder of Deeds' office, and has a corporation been formed and exist in the District of Columbia known as Selma's, Inc.? A. Yes, sir.

Q. That is evidenced by what, sir? A. By the records that we have. I have the records here of the Recorder's office; also the record from the Superintendent of Corporations.

332 * * * * *

BY MR. FADLER:

Q. Now, what is this document here, sir? A. This is a certificate of the corporation, of Selma's, Inc.

Q. What is the date of that certificate, sir? A. August 7, 1934.

* * * * *

333 MR. BOARDMAN: We will stipulate to that, that for Selma's, Inc.,

the certificate was filed on August 7, 1934.

THE COURT: If that is enough, the stipulation, I think, will take care of it.

MR. FADLER: All right, sir.

BY MR. FADLER:

Q. What is this book, sir? A. This is the record that we keep. That is the record of the Recorder of Deeds' office.

Q. And what does the record show, sir, as far as Selma's, Inc. is concerned? A. It just shows summary of this here.

THE COURT: Does it show the date of the incorporation?

THE WITNESS: That is right.

THE COURT: Let him state that, and you can stipulate.

BY MR. FADLER:

Q. What is the date of the incorporation?

334 THE COURT: As shown by your book.

THE WITNESS: Well, the same thing as here. August 7, 1934, it was recorded in the Recorder's office, 11:37 a.m.

BY MR. FADLER:

Q. And this corporation is a District of Columbia corporation at this time? A. As far as our records are concerned, we have no record showing that the corporation has been dissolved.

Q. And the corporation is in being at this time; is that correct? A. As far as our records are concerned.

Q. Have you searched the records in the Recorder of Deeds' office as to any further proceedings or dissolution of the corporation? A. I did; and we have no records to show there has been dissolution of the corporation.

Q. If there is dissolution, is it required by law that it be filed in your office? A. Should be.

MR. BOARDMAN: I object, Your Honor.

THE COURT: Sustained.

MR. BOARDMAN: All you know, personally, is that you can't find any record of a dissolution of the corporation being filed; isn't that right,

sir?

335 THE WITNESS: That is right.

* * * * *

BY MR. FADLER:

Q. Has there been any indication that there has been any transfer of the interests of this corporation to any other party in the Recorder of Deeds' office? A. Not according to our records.

* * * * *

JOSEPH D. BULMAN

was called as a witness by and on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

336 * * * * *

DIRECT EXAMINATION

BY MR. FADLER:

* * * * *

Q. And you practice law in the District of Columbia, sir? A. I do.

337 Q. You are a member of the bar of the District of Columbia? A. I am.

Q. You have your office in the Woodward Building, Washington, D. C.? A. I do.

Q. Are you acquainted, sir, with the Defendant and the Plaintiff in this case, the Plaintiff being Mrs. Hilda L. Bowdan, and the Defendant being Mr. Murray R. Bowdan? A. I am.

Q. Did you have occasion to draft some papers for them in regards to the transfer of interests in a corporation known as Selma's, Inc.? A. I believe I did, many years ago.

Q. Now, I would like to present these to you, Mr. Bulman, and ask if you remember or recollect these papers? These have been submitted by the Plaintiff as Plaintiff's Exhibits Nos. 3, 4, 6, 7, 8, and also No. 2. Let's see if there are any other papers here that they brought in. I think those are the ones. Do you recall those papers, Mr. Bulman? You can have time to look them over. A. I don't have any independent recollection, Your Honor, of drafting them. There is nothing on here

that indicates my name is appended to any of them, but the type looks like some of it may have come from my office.

338 Q. Mr. Bulman, what we were interested in mainly was the document, Plaintiff's Exhibit No. 3, entitled, "Agreement of conveyance." First of all, do you remember this instrument? A. I only recollect it in that the Notary, Your Honor, is Hatty L. Calvert, who at that time was secretary to Sefton Darr, with whom I was associated for many years. She did notarize it; and I must have been the author of it.

Q. Let me ask you this: I notice that the consideration in this purported transfer was left out. Does that bring any recollection -- can you recollect any instance in accordance with that? A. The only thing I can remember is that I was approached either by Mr. Bowdan or Mrs. Bowdan, or both, and informed that the corporation was to be dissolved, that was then operating the store; and I drew whatever instruments were necessary to the dissolution. Thereafter, I don't know whether it was actually dissolved, a certificate of dissolution was ever filed or whether I was notified by one or the other or both just to let the corporation remain in abeyance, and they were going to continue on in a private form.

Q. Now, to your knowledge, Mr. Bulman, was this corporation ever formally dissolved? A. To my knowledge, it was formally dissolved.

339 Q. How was that accomplished? A. By these papers.

Q. Were they ever filed? A. The certificate of dissolution was never filed, to the best of my recollection; but as far as the intent of the parties, it was the intention that it would be dissolved; and if I recollect correctly, the accountant was instrumental in bringing it about, because of some tax saving, with which I am not familiar.

Q. Do you remember why the consideration was left blank on that document, Plaintiff's Exhibit No. 3? A. No; I have no recollection of why it was left blank.

Q. Do you remember any note that passed between Hilda L. Bowdan and Murray R. Bowdan for any consideration? A. I don't remember. I don't have any recollection.

Q. Do you have any recollection of any amount that would be in that

space on that agreement? A. I have no recollection.

Q. Do you remember specifically the filing of any certificate to dissolve this corporation? A. To the best of my knowledge, no certificate was ever filed dissolving, formally dissolving it.

MR. FADLER: That is all.

340 CROSS EXAMINATION

BY MR. BOARDMAN:

Q. Mr. Bulman, calling your attention to the agreement of conveyance, which is Plaintiff's Exhibit No. 3, for the purpose of the record, on its face, it is shown to be a conveyance of the business and property of the corporation to Hilda L. Bowdan, dated August 7, 1942. Mr. Bulman, you said your only memory of that was that the Notary is one you would have used at that time? A. Yes; she was the secretary of Sefton Darr.

Q. Yes. Does this paper have the appearance of something that would have been done in your office? A. Yes.

Q. And you do recall that the Bowdans employed you to make some changes in their business affairs? A. Yes.

Q. At any time, Mr. Bulman, did you ever receive any information from either of the Bowdans or from any source that this agreement of conveyance didn't mean exactly what it said? A. Not at all.

MR. FADLER: I object, Your Honor. I don't understand that question. I wonder if he would repeat that.

341 MR. BOARDMAN: The question was if at any time he ever received any information from Mr. Bowdan, Mrs. Bowdan, or from any person that this agreement of conveyance, transferring the business from the corporation to Mrs. Bowdan, wasn't intended to be exactly what it purports to be.

THE WITNESS: I received no contrary instructions, other than that which was cited in the instrument.

Q. Whatever instruments you drew were drawn in conformity with the instructions of your clients, Mr. and Mrs. Bowdan? A. And signed by them.

Q. Do you have any knowledge whatsoever that there was any intention on the part of either of them that this was not a legitimate transaction? A. No. My best knowledge and memory are that this instrument was to dissolve the corporation; and it was dissolved as of the date of the papers which I have here.

Q. And this other instrument was intended to give Mrs. Bowdan the business, as it says? A. Whatever it recites. I have no independent recollection of what the contents were, other than I carried out the instructions of my clients.

MR. BOARDMAN: Thank you, Mr. Bulman.

MR. FADLER: One further question, Mr. Bulman. Do you have any recollection at all why the consideration was left out of that agreement?

342 THE WITNESS: No, I do not.

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346 ALBERT J. SHERMAN

was called as a witness by the defendant and being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FADLER:

* * * * * * *

Q. What is your occupation? A. I am an accountant with the C. & P. Telephone Company.

Q. What was your occupation between 1942 and 1951? A. I was still accountant for the telephone company and did considerable night work for various clients.

Q. Did you ever have occasion to do any accounting work for Selma, Inc.? A. Not, as Selma, Inc., no, sir.

347 Q. Did you ever do any work for a business known as Selma's? A. Yes, sir.

Q. When was that? A. About 1942 to 1951, I believe.

Q. What did you do individually as an accountant for this business? What were your duties? A. To reconcile their bank statements, draw out the total balance and prepare their income tax returns, social security tax returns and all necessary government reports that had to be prepared.

Q. How often did you visit the premises of Selma's? A. It was usually once a month. Sometimes three or four times a month.

Q. Where was the business in 1942? A. At 1345 Connecticut Avenue.

Q. Where was the business moved? A. 1307 Connecticut Avenue.

Q. Did you ever visit the business at 1345 Connecticut Avenue? A. Yes, once.

Q. When was that? A. That was when they purchased a concern known as Selma's, Inc., and they bought and transferred it to 1307 Connecticut Avenue.

348 Q. Do you remember the month or date in 1942 you visited this place? A. I can't recall.

Q. How many times were you there? A. Once, about ten minutes or fifteen minutes.

Q. After the business moved to 1307 Connecticut Avenue, how often did you visit it until 1951? A. As many times as necessary to prepare the various reports. That entailed at least twice every month and sometimes more.

Q. A moment ago you said once a month? A. That is right, but I had access to it day or night. I had the key and I had permission to go in any time, even at night.

Q. Was there any certain day of the month you would make these visits? A. None specified, except I would help to check the bills for accounts payable which were due before the 10th.

Q. So you would come in on the 8th? A. Or the 6th or 7th.

Q. Was there a bookkeeper on the premises? A. Yes, they had a bookkeeper.

Q. Who was the bookkeeper? A. There were quite a few I don't recall. One was Mrs. Dannenberg.

349 Q. On all of your visits there and any of your visits was anyone there? A. I had access at night.

Q. What time of the night would you go? A. About 7:30 or 8:00.

Q. How many visits did you make when anyone was there? A. I don't recall over ten years.

Q. Do you know how many? A. No.

Q. Six, eight or ten? A. More than that in a year.

Q. But you went in many nights when no one was there at seven o'clock? A. That is right. I have gone to quite a few clients or offices at night when no one was there.

THE COURT: Wait a moment. I think you have answered the question.

Q. Do you know the plaintiff Hilda L. Bowdan, and the defendant, Murray R. Bowdan? A. Yes, sir.

Q. What other visits did you make outside of the evening? What other times did you visit the premises of 1307 Connecticut Avenue?

A. I would visit on Saturday afternoons, Saturday mornings, or whenever
350 I had occasion to go there to get some work done while they were there, talked to the bookkeeper, and checked things over.

Q. Did you go there on Saturday evenings? A. No, but my wife still buys her clothes there and I would go by if there was a package and pick it up.

Q. In your capacity as auditor I mean? A. Just occasionally if they had reason to call me.

Q. But your visits were usually on Saturdays? A. That is correct, sir, and in the evenings.

Q. When you made those visits to the store did you ever see Mr. Bowdan there? A. I did.

Q. Did you go over the books with him? A. We did.

Q. Did you ever go to the business after 1951? A. No, sir. I think they obtained another accountant.

Q. You didn't see Mr. Bowdan after 1951? A. No, I did not.

Q. Did you see him up to 1951? A. Yes, sir.

Q. Did you see him on these other evenings that you went there? A. Yes, sir; on evenings.

Q. Did you see him on the Saturday visits? A. Well, once in a
351 while he might be there, yes. I mean I can't recall how many times. Yes, coming to think of it, he would be there sometimes on Saturday afternoons. That is right.

Q. That is from 1942 to 1951? A. Yes, sir.

Q. What would you discuss with Mr. Bowdan? A. Primarily bills to be paid and go over various bills and check these bills to be paid.

* * * * * * *

Q. Would Mr. Bowdan offer any assistance? A. Well, when you put it that way and say "assistance", what do you mean? Help me?

Q. Yes. Inform you generally. A. Yes. I might ask certain questions in regard to certain expenditures, as to the nature of the expenditures, what expenditures and their purpose. I would do that.

* * * * * * *

CROSS EXAMINATION

BY MR. BOARDMAN:

Q. Did you make the income tax returns for the Bowdans? A. I did, yes.

Q. Did you also do work for Mr. Bowdan in connection with his
352 wholesale liquor business, Murray R. Bowdan and Company? A. I did, yes. That is right.

Q. Did you make the income tax for him concerning that? A. I did.

Q. You know the distinction, do you not, between a corporation income tax return, a partnership income tax return and an individual return? A. I do.

Q. During the years that you have mentioned, 1942 to 1951, had you helped them prepare their income tax returns for those years? A. Not both of them. I handled Mrs. Bowdan's, but Mr. Bowdan was not in business from 1942 to 1951 in the wholesale liquor establishment.

Q. But he was merely on a commission basis? A. He was employed, but I did not prepare all of his returns from 1942 to 1951 for him.

Q. But you did prepare the returns for Mrs. Bowdan, didn't you? A. I did.

Q. It was on her income tax return that you included the income from Selam Gowns business. Is that correct? A. That is correct.

Q. During that period did you ever help them prepare their personal
353 returns? A. No, sir.

Q. During that period of time did you ever help them to prepare their corporation return? A. No, sir.

Q. Did you ever hear of the existence of a corporation in connection with Selma Gowns?

MR. FADLER: I object. It is too indefinite.

THE COURT: The objection is overruled. You may answer the question.

THE WITNESS: There was a Selma Gowns Company. These people bought it. I think the name was Selma Gowns, Inc. That was another

company. * * *

Q. During the time you prepared these income tax returns did Mr. Bowdan ever tell you it was a corporation and that it was a corporation return? A. No, sir; it was not incorporated.

Q. Did you deal with Mrs. Bowdan? A. Yes, sir.

Q. I believe you included the information from Selma Gowns on her tax returns? A. Yes, sir.

Q. Is it not a fact after the time the Congress amended the Income Tax Law, which permitted the filing of joint returns, did you --

354 MR. FADLER: Objected to, your Honor. He can ask --

THE COURT: (Interposing) The objection is overruled. You may complete your question and the witness may answer.

BY MR. BOARDMAN:

Q. Did you prepare joint returns --

MR. FADLER: (Interposing) Joint what, your Honor.

THE COURT: Let counsel state the question.

BY MR. BOARDMAN:

Q. After the amendment to the Internal Revenue Law which permitted husband and wife to file joint returns? I can get the date, if it is material.

MR. FADLER: I don't think this man is qualified to testify what the laws of the United States are.

THE COURT: The objection is overruled. You may answer.

THE WITNESS: During the time people could file separate returns, we did.

BY MR. BOARDMAN:

Q. It was on Mrs. Bowdan's separate return the income from Selma Gowns was included. Is that correct? A. Yes. And when the joint returns came into being, I am trying to recall whether it was to her advantage or disadvantage, whether they should file two separate returns,

355 whether their income would profit by it, but I don't recall.

Q. You don't recall whether or not that was done. Is that what you mean? A. No, I don't recall that.

Q. But you do know there was no partnership return? A. There was no partnership return; no, sir.

Q. Did Mr. Bowdan at any time ever tell you or claim in any manner he was a partner in Selma Gowns? A. He sort of made remarks he was running it. There was no partnership agreement. He never filed a partnership agreement and there was no such return as a partner.

* * * * * * *

REDIRECT EXAMINATION

BY MR. FADLER:

Q. You did file joint returns for Mr. and Mrs. Bowdan, income tax returns? A. I just don't recall whether I filed any or whether it was to their advantage to file separate returns.

Q. You do recall that they were married between 1942 and 1951? A. Yes, sir.

Q. Did you file a return for husband and wife? A. You mean joint?

Q. Yes. A. No, I don't recall when the joint return came into
356 being. I don't recall whether it was to their advantage.

Q. In other words, you always filed these returns to their advantage? A. Yes, sir. I try to take care of my clients.

Q. And the accounting statements of the business known as Selma's was always done with advantage to all concerned? A. Yes, sir.

THE COURT: He isn't passing on the question. He is testifying to what he did.

* * * * * * *

BY MR. FADLER:

Q. I would like to show you Plaintiff's Exhibit No. 10, Plaintiff's Exhibit No. 11, and Plaintiff's Exhibit No. 12. Will you identify them, please. A. They are my returns.

Q. They are the returns? A. Yes, sir.

Q. On the front, the top line? A. These are made out jointly, Murray R. Bowdan and Hilda L. Bowdan.

357 Q. What years? A. 1948, 1949 and 1950. I don't know whether it is '50. Just a moment. Yes. Now, that you show them to me I recall

them, but I could not remember at the time.

Q. I show you Plaintiff's Exhibits Nos. 10, 11 and 12. No. 10 is the return for the year 1948? A. Yes.

Q. And No. 11? A. 1949.

Q. No. 12? A. 1950.

Q. How are those made out? A. Joint returns.

Q. For whom? A. For Murray R. Bowdan and Hilda L. Bowdan.

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ROSE KRUCOFF SILLS

was called as a witness by the plaintiff and being first duly sworn, was examined and testified as follows:

358 DIRECT EXAMINATION

BY MR. FADLER:

* * * Q. Mrs. Sills, where do you live? A. 2717 Woodley Place, Northwest.

Q. Do you know the plaintiff and the defendant in this case, Murray R. Bowdan and Hilda L. Bowdan? A. I do.

Q. Under what circumstances do you know them? A. Well, I just know them as friends for a long time.

Q. And where have they lived in relation to where you live? A. About two doors away.

Q. About two doors away? A. Yew, sir.

Q. Are you a neighbor of theirs? A. Yes, sir.

Q. Did you ever have occasion in 1950 or 1951 to visit their home? A. I guess. I was neighborly with them. We were neighborly.

Q. Did you ever go over to their home during that period? A. Yes, I did.

359 Q. How many visits did you make to their home in 1950 and 1951? A. I could not say.

Q. Would you say one a month? A. I would not be able to say exactly. We were just neighbors, and may have just talked outside without going into the house. I would see them outside a great deal more than going in. I didn't go in the home very often.

Q. Did you go into the home at any time during the months of August and September, 1951? A. I would not remember that.

Q. Let me ask you this: Could you say approximately how many times a month that you visited their home or visited with them?
A. Well, the only thing I can say I saw them mostly coming in and going out of the house. I am very busy. If I did run out it was for a moment or so.

Q. Would you say that was once a week, twice a week or once a month? A. In the house?

Q. Yes, in the house? A. Maybe once a month. I could not say for sure.

Q. On the visits that you made to their house in 1950 and 1951, did you observe Mr. and Mrs. Bowdan together at any time? A. Well,
360 I don't recall together very often.

Q. On the occasions when you did visit did you see them together very often? A. Yes, I had sometimes.

Q. On the occasions that you saw them together what did you observe about their conduct toward each other? A. Well, I never thought of anything about their conduct. It was just friendliness.

Q. Did you notice anything unusual? A. No.

Q. And were they always friendly to you? A. Oh, yes, sir.

* * * * * * *

CROSS EXAMINATION

BY MR. BOARDMAN:

Q. I gather from the way you testified you don't have much memory of when you were actually in the house, do you? A. Well, I lived there a long time. If I did run in, it was just neighborly. I would run in maybe for some specific reason, but I would see them very often coming and going.

Q. You would see them coming in and out? A. Yes, sir.

Q. Would you say "Hello" and a few words that way? A. Yes, sir.

Q. That is the way you mostly saw them, isn't it? A. Yes, sir.

361 * * * * * * *

REDIRECT EXAMINATION

BY MR. FADLER:

Q. How long have you lived as a neighbor to Mr. and Mrs. Bowdan? A. Since they moved there. I have lived in this house for thirty years.

Q. Would you say 1940? Since 1940? A. Well, I think it was before 1940. I don't remember what date they moved in. I have known Mrs. Bowdan for a long, long time, for many years.

Q. For a long time? A. Yes, even before she moved to this house. And I met Mr. Bowdan when he came to this house.

Q. At the time he came, would you say that was 1940?

THE COURT: She said before that. You must not cross examine your own witness.

BY MR. FADLER:

Q. About when did you know Mr.&Mrs. Bowdan? A. I met Mr. Bowdan at the time they came to Washington. I don't remember the date, but from the date they moved to Washington.

Q. How well did you get to know them during this period? A. Just like friends. They were very nice people. That is all I know.

362 Q. Did you ever notice anything unusual about their conduct?

A. No, sir.

* * * * * * *

RECROSS EXAMINATION

BY MR. BOARDMAN:

Q. You do know there came a time Mr. Bowdan didn't live there any more, don't you? A. Yes, sir.

Q. Mrs. Bowdan stayed there after that, didn't she, and is still there? A. I believe so.

* * * * * * *

363 MURRAY R. BOWDAN,

the defendant, having been previously sworn, resumed the stand and testified as follows:

DIRECT EXAMINATION

BY MR. FADLER:

Q. Mr. Bowdan, will you please identify these items? A. These

are checks made out to Hilda L. Bowdan on 6/13/52 on the Hamilton National Bank, Murray R. Bowdan and Company, for Newton Bowdan at the St. Clair Hospital, in the amount of $200, endorsed by Hilda Bowdan and for Newton Bowdan. These are the same transactions.

Q. What is this? A. This is a check on Murray R. Bowdan dated 7/5/52 made out to Newton Bowdan in the amount of $300 and it was endorsed by Newton Bowdan and Hilda Bowdan.

Q. What is that one? A. 6/24/52, check made out for Newton Bowdan for $204.81, endorsed Newton Bowdan, Hilda Bowdan for deposit to the account of Hilda Bowdan.

MR. FADLER: I would like to mark these as Defendant's exhibit;
364 these three checks.

* * * * * * *

(Three checks were marked and received in evidence as Defendant's Exhibit No. 10.)

BY MR. FADLER:

Q. What were these three checks for? A. This was for the hospital bill, part of the hospital bill, that Mrs. Bowdan said I didn't contribute anything to - the St. Clair Hospital in New York, for Newton Bowdan.

Q. And how much do they total, the three checks? A. $704.81 at this one particular time.

Q. Now I would like to show you another group of checks. What are those for? A. These are a group of checks that I had sent to my
365 son Newton Bowdan while he was in Philadelphia.

Q. For what years? A. For the year 1951. There are here 18 checks that I gave in the amount of $430.

Q. For what year is this? A. 1951.

Q. And what is that? A. For 1952 we have here 35 checks amounting to $1273.60.

Q. And what year is that? A. 1952.

Q. What is this next group? A. Checks for 1953, 16 checks in the amount of $975, for Newton Bowdan.

Q. For what year were those? A. 1953.

Q. Who are these checks endorsed by, all of them? A. Newton Bowdan and his landlord.

Q. These are for the years 1951, 1952, and 1953, is that correct? A. Yes, sir.

Q. And those total up to how much, the three of them? A. $2,675.60.

Q. Then these checks offered as a group, made payable to Newton Bowdan for the years 1951, 1952 and 1953, endorsed by him and or his landlord, add up to the amount of $2675.60, is that correct? A. Yes.

366 MR. FADLER: I would like to offer these as a group, Your Honor.

* * * * * * *

(A group of checks was marked and received in evidence as Defendant's Exhibit No. 11.)

BY MR. FADLER:

Q. And what are these items? A. I have several checks here dated 12/22/50 made out to Bullis School in the amount of $150, for Newton Bowdan.

Q. What is this check for? A. His tutorage, his fee, part of his fee.

Q. For his schooling and education? A. Yes, sir.

Q. And it was made out to what? A. Bullis School that he graduated from.

Q. And he was attending the school at the time? A. Yes, sir.

Q. And that is for what amount? A. $150.00.

367 Q. And it is dated what date? A. 12/22/50.

MR. FADLER: I would like to offer that in evidence, Your Honor.

* * * * * * *

(Check to Bullis School, dated 12/22/50 for $150 marked and received in evidence as Defendant's Exhibit No. 12.)

BY MR. FADLER:

Q. What is this check? A. On March 19, 1951 I have here a check, Murray R. Bowdan and Company, in the amount of $1,000 made out to Murray R. Bowdan and endorsed to the credit of Hilda L. Bowdan, for $1,000.

Q. And what is the date of that? A. March 19, 1951.

MR. BOARDMAN: No objection.

(Check, March 19, 1951 for $1000 to Murray R. Bowdan endorsed to credit of Hilda L. Bowdan, marked and received in evidence as Defendant's Ex. No. 13.)

368 BY MR. FADLER:

Q. What is this item? A. On April 30, 1951 I made out a check to cash in the amount of $70.48 for deposit with the Lincoln National Bank for the account of Selma's Gowns, Hilda L. Bowdan Special, $70.48.

MR. FADLER: I would like to offer this in evidence.

* * * * * * *

(Check, April 30, 1951 for $70.48 for account of Selma's Gowns, Hilda L. Bowdan, Special, marked and received in evidence as Defendant's Ex. No. 14.

BY MR. FADLER:

Q. What is this item here, Mr. Bowdan? A. This is a check, Murray R. Bowdan and Company, on December 4, 1950, made out to M.R. Bowdan, in the amount of $3,000 that I gave to Irving S. Lichtman.

Q. Is it endorsed? A. Endorsed by M.R. Bowdan and Irving S. Lichtman, for the down payment of part of the Gable Corporation.

MR. FADLER: I want to introduce this in evidence.

MR. BOARDMAN: I object to this. It has no relevancy in this case, Your Honor. It was not given to Mrs. Bowdan. As I understand it, there is a controversy between Mr. Bowdan and Mr. Lichtman about this Gable

369 Corporation. That is not in this case, and this is not admissible. It is not payable to Mrs. Bowdan, and it is not endorsed by her.

THE COURT: Mr. Fadler, what do you have to say?

MR. FADLER: The relevancy, Your Honor, would be the fact of whether or not Mrs. Bowdan has been receiving income from this corporation for which Mr. Bowdan paid for the stock, and that she is receiving dividends.

MR. BOARDMAN: That doesn't prove that she is receiving dividends.

MR. FADLER: This proves he paid for the stock.

MR. BOARDMAN: That doesn't tend to prove that she is receiving anything.

MR. FADLER: It would tend to prove he bought the stock.

THE COURT: It may be received for that limited purpose, and will be given weight only if it is shown that she received dividends from the stock so purchased.

* * * * * *

370 (Check for $3,000 endorsed Murray R. Bowdan, and Irving S. Lichtman, received in evidence as Defendant's Ex. No. 15)

* * * * * *

371 CROSS EXAMINATION

BY MR. BOARDMAN:

Q. What was your income in 1951?

MR. FADLER: I object, Your Honor. This man was brought back just to identify these checks and items.

Is this cross examination or is this direct examination?

THE COURT: This is cross examination. Objection overruled. Answer the question.

BY MR. BOARDMAN:

Q. In 1951, when you gave these checks that you put in evidence, what was your income for the year 1951?

Maybe I am wrong, but weren't there checks here for 1951, Mr. Fadler? A. 1950, 1951 and 1952. Look at them. They are there.

Q. What was your income for 1951? A. I can't say offhand, but I can have my income tax report which will show.

Q. Approximately how much? A. I haven't any idea how much.

Q. It was at least $15,000 wasn't it? A. No; no, I can't say, but I can verify the exact figures.

372 Q. What was your income for the year 1952? A. If I remember correctly I think I suffered a loss in 1951 and 1952 and 1953 of several thousand dollars, but I want to bring all the --

THE COURT: Then you had no income for those years.

THE WITNESS: No, I wouldn't say I had no income. I withdrew

my own capital, Your Honor.

THE COURT: Well, answer his question.

THE WITNESS: I can't answer it; I don't know.

BY MR. BOARDMAN:

Q. What was your income for 1954? A. I think it was the same thing. We lost a few thousand dollars and I used the money, depleted by my capital. I used my capital to live on, draw money and pay expenses for everything that I had to.

Q. What was your income for 1955? A. I will answer that the same way.

Q. A loss? A. I believe there was a slight loss.

Q. Have you ever filed an income tax return that didn't show a loss? A. Yes, sir.

Q. When? A. It might have been one of those years it showed a very decent profit. We have the records for it, sir.

* * * * * *

374 MARIE ATKINSON,

was called as witness by the defendant, and being first duly sworn testified:

DIRECT EXAMINATION

BY MR. FADLER:

* * * * * *

Q. Where do you work? A. Selma's Gowns.

Q. How long have you worked there? A. Approximately 15 years; 14 or 15 years.

Q. And what year did you first come to work there? A. I don't remember the year.

Q. Would you say 1942? A. How many years would that make it? I am not fast on arithmetic.

Q. Did you come to work there as soon as the place was first opened? A. Yes.

Q. Do you remember the place when it was upstairs at 1345 Connecticut Avenue? A. I do.

375 Q. Where did it move from there? A. 1307.

Q. How long after you came to work there did it move from 1345 Connecticut Avenue to 1307 Connecticut Avenue? Approximately? Was it a matter of months? A. Oh, within the year I would say.

Q. And you have been employed there to date? A. I am.

Q. Have you received a salary continuously from the time you began until the present time? A. Naturally.

Q. And who signs that salary check? A. Who signs the check?

Q. Yes. Who pays it? A. I am not paid by check. I am paid cash.

Q. And who gives you the cash? A. Mrs. Bowdan.

Q. You are on her payroll at this time? A. I am.

Q. Do you know the defendant Murray R. Bowdan? A. I do.

Q. And under what circumstances do you know him --have you known him -- under what circumstances? A. Under what circumstances?

Q. How did you come to know him? A. Through the shop.

376 Q. And what was his capacity at the shop? A. Capacity? I don't know. I don't know what capacity he had in the shop.

Q. What did he do there? Was he a customer of the shop? What did he do in the Shop, Mrs. Atkinson, that's what I mean. A. I don't quite understand what you mean.

Q. What was Mr. Bowdan's job? Work? What did he do at the shop?

THE COURT: She hasn't said that he had any. Ask her the question.

BY MR. FADLER:

Q. Did he have a position or job at the shop? A. Not to my knowledge. He was in and out.

Q. He was in and out and you don't know whether he ever did anything there from 1942 to the present, Mrs. Atkinson? A. He was in and out of the shop, that's all I can tell you.

Q. You never saw him do any work in the shop? A. Work? No.

BY THE COURT:

Q. Did he ever seem to do any work? A. Actual work?

377 Q. Yes. A. No.

CROSS EXAMINATION

BY MR. BOARDMAN:

Q. Where was it that you first became employed in connection with this business of Selma's Gowns? A. At the first address I gave you, on Connecticut Avenue; I have forgotten the number.

Q. That was an upstairs place, wasn't it? A. An upstairs shop, yes.

Q. And who employed you? A. Mrs. Bowdan.

Q. And did she make the arrangements with you? A. She did.

Q. And who has always paid you since then? A. Mrs. Bowdan.

Q. You say that your memory is that the business moved from the upstairs place to a downstairs location sometime during the first year that you worked? A. Yes, I believe that is right.

Q. And has it been at the same location downstairs ever since? A. Yes, it has.

Q. And who has run the business since you have been employed?

378 A. Mrs. Bowdan has always been my boss.

Q. Who has run the business? A. Mrs. Bowdan.

Q. How many other employees have been up in that store from time to time during the time you worked there? A. Well, there are approximately 14 to 16 people on the payroll; maybe 18 at times. I don't know the exact number.

Q. That is true now, isn't it? A. Yes.

Q. It hasn't always been that big a business, has it? A. No.

Q. When you first started how many were there? A. I was the only person at the first address.

Q. And then through the years have there been gradually more employees added to the staff? A. Yes.

Q. Do you of your own knowledge know who hired these different people? A. Mrs. Bowdan.

Q. And from whom have all the employees taken their directions

and orders? A. Mrs. Bowdan.

Q. Did Mr. Bowdan ever to your knowledge employ anyone there? A. That I wouldn't be able to say.

Q. To your knowledge. A. To my knowledge, no.

379 Q. Did you ever see him doing any work around the place? A. Work? No, sir.

Q. Is it a fact that he would come in there and take Mrs. Bowdan home in the evenings? A. Yes.

Q. You have seen that? A. Yes.

Q. And he would sometimes visit her there? A. Yes.

Q. Do you know who bought the merchandise? A. Mrs. Bowdan.

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REDIRECT EXAMINATION

BY MR. FADLER:

Q. Do you intend to stay on the payroll of Mrs. Bowdan? A. I surely do.

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380 CLARA M. BATEMAN,

was called as a witness by the defendant, and being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FADLER:

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Q. And where do you work? A. Selma's, Connecticut Avenue.

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381 Q. Mrs. Bateman, how long have you worked there? A. Off and on for 14 years.

Q. Do you know Murray R. Bowdan, sitting here? A. I do.

Q. Under what circumstances have you known him? How did you become acquainted with him and under what circumstances? A. Well, as the husband of Mrs. Hilda Bowdan.

Q. Did you ever see him on the premises? A. Yes.

Q. At 1307 Connecticut Avenue? A. I have.

Q. And how often do you see him there? A. Well, it is sometime since I have seen him there.

Q. When was the last time you saw him there? A. Well, as near as I can remember I think it was five or six years; as near as I can remember.

Q. The period between the first time you saw him in those premises and the last time you saw him, how many times did you see him visit the premises? Did you see him every day? A. From what time?

382 Q. From the first time you saw him there until the last time you saw him there, how often would he be on the premises at 1307 Connecticut Avenue? A. Well, sometimes it would be in the morning, or maybe at noon and in the evening.

Q. And how late in the evening did you see him there, Mrs. Bateman? A. Well, up until I left to go home.

Q. What time would that be usually? A. I would say six or six-thirty; about six-thirty.

Q. Did you ever work in the evenings, after 6:30 or was your employment -- A. Sometimes I would, if there was anything I had to do.

Q. And how late would you stay in the evening on those occasions? A. Well, now, I never kept any track of that. It wasn't too late. During the war we worked Thursday nights until 9 o'clock.

Q. Did you ever see Mr. Bowdan there on those occasions? A. Sometimes, yes, I did.

Q. Did you ever work there on Saturdays? A. Well, we always are there on Saturday.

Q. Did you ever see Mr. Bowdan there on Saturdays? A. Well,

383 sometimes, yes.

Q. When you had a chance to observe Mr. Bowdan there what was he doing? What did you observe him doing in the store? Did he have any duties there? A. Well, I was too busy in doing what I had to take care of to know what he was doing. He would be up in the office. I

wasn't up there unless I had to go up for something.

Q. How are you paid at Selma's? A. Pardon?

Q. Are you paid by cash or by check? A. Cash.

Q. And did you ever work on Sundays in the store? A. Yes, I have, at times.

Q. Did you ever observe Mr. Bowdan there on Sundays? A. Yes, he came down on Sundays sometimes, yes.

Q. I call your attention to the periods when you saw Mr. Bowdan there, did you ever work on George Washington's Birthday? A. Why, yes, I have worked there on George Washington's Brithday.

Q. Did you ever notice Mr. Bowdan there on that occasion? A. Yes; sometimes, yes.

Q. Did Mr. Bowdan ever work with you on preparing business for sales, or things, on George Washington's Brithday? A. Well, that work was done the night before.

384 Q. And did he work with you on those occasions? A. Well, as near as I can remember I suppose he has, - back sometime ago.

Q. And during that time sometime ago, when he was there, he was a very frequent visitor, very frequently on the premises, is that correct? Would you say that?

THE COURT: These are very leading questions, almost every one.

MR. FADLER: I am trying to save time, Your Honor.

THE COURT: No. I have to protect this record. We will leave the cross-examination to Mr. Boardman.

BY MR. FADLER:

Q. What did you determine his presence -- how would you say his presence in the premises was? How would you classify it?

How would you classify his presence on the premises of 1307 Connecticut Avenue at the time when he was there? A. Well, Mr. Bowdan used to come in, as I told you; at times he would come in in the morning; sometimes he would come in around noon. And then in the evening, at closing time.

Q. And about how often was that? A. Well, really I couldn't say. I couldn't really say. I wouldn't know. I was busy.

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385 CROSS EXAMINATION

BY MR. BOARDMAN:

* * * * * *

Q. You have always worked at Selma's Gowns in the same place it is now, 1307 Connecticut Avenue? A. Yes, I have.

Q. You didn't work when it was at an upstairs premises? A. No, sir.

Q. Can you tell us approximately when it was that you first worked in the business? A. At Selma's?

Q. Yes. A. Well, I think, as near as I can remember, I think it was in '43, and I think that would make it about 14 years, or going on 15.

Q. As near as you can remember it was about 1943? A. Yes, as near as I can remember.

Q. And who employed you? A. Mrs. Bowdan.

Q. And you are paid by cash, are you? A. I am paid by cash, yes.

Q. How frequently? A. Every week.

386 Q. And who has paid you since you have worked there? A. Well, Mrs. Bowdan, I guess.

Q. Don't guess about these things, please. You know who pays you. A. Well, Mrs. Bowdan pays me.

Q. Is that your answer then? A. Yes. She pays me.

Q. Who hands you the money? A. Well, sometimes it is the bookkeeper.

Q. You say you worked there off and on for 14 years. What do you mean by that, Mrs. Bateman? What does the off and on mean? A. Well, there have been times when I have been out two and three months in that period.

Q. For what part of the time have you worked there since 1943? A. Well, in 1950 I was out three months and I went back and I worked up until --

Q. Well, Mrs. Bateman, what I am trying to get at whether your absences have been substantial or whether you have been there most of the time. A. Well, I have been there most of the time in the 14 years.

Q. And you have taken out several months, for one reason or another, at different times, is that right? A. Yes.

387 Q. Have you worked there 90 percent of the time, do you think? A. Well, I would think so.

Q. During that time who has run the business? A. Well, Mrs. Bowdan.

Q. And how many people were working there when you started to work there? A. Well, as near as I can remember -- I couldn't give you the exact number.

Q. Were there many there when you started to work? A. Maybe 6, 8 -- I just can't say.

Q. Have there been many come and go in that period? A. Employees?

Q. Yes. A. Yes.

Q. And who has employed them, if you know? A. Mrs. Bowdan.

Q. And who do they take orders from, or who have they taken orders from? A. Mrs. Bowdan.

Q. You say that you have seen Mr. Bowdan there mornings -- you haven't seen him you think maybe for five years. A. I haven't seen him in that length of time.

Q. Back when you first started work there you used to see him,

388 didn't you? A. Yes, I did.

Q. And you say he came there in the morning? A. Yes.

Q. Did you ever see him doing any work around there? A. Well, if he was upstairs I don't know.

Q. No. I say did you see him? We understand, Mrs. Bateman, all through my questioning it will be understood if you don't see him you don't know what he is doing. A. No.

MR. FADLER: I object to that, Your Honor.

THE COURT: Answer the question.

BY MR. BOARDMAN:

Q. Did you ever see him doing any work? A. Well, I know he has been up in the office.

Q. Were you ever there when he was up there? A. I have gone up there, yes.

Q. Can't you answer the question? -- it is so simple. Did you ever see him doing any work? I mean see him with your own eyes. Tell us whether you did or not. A. I seen him up there when I first went there. He made up the payrol ls sometimes.

Q. When he came there in the evening did you ever see him do anything? A. Usually it was about the time when we were ready to
389 go home.

Q. Well, did you ever see him doing anything?

THE COURT: Do any work when he came; that's what he means.

THE WITNESS: I understand, but I guess I just didn't pay any attention.

BY MR. BOARDMAN:

Q. Can you tell me whether you saw him or not? I just want a yes or no answer. A. Yes.

Q. Did you see him doing any work? A. Well, whatever he had to do; I didn't pay any attention to it.

MR. BOARDMAN: Well, I guess I can't get any more answer.

THE WITNESS: I would be glad to answer anything that I can.

BY MR. BOARDMAN:

Q. If you saw him doing any work, tell me. If you didn't see him say you didn't, one of the two? A. Well, I don't know, maybe moving dresses or something like that he might have.

Q. Did you see anything like that often? A. No.

* * * * * *

392 WEBSTER R. FRYE

was called as a witness by and on behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOARDMAN:

* * * * * *

Q. Where are you employed? A. American Security & Trust Company, 15th and Pennsylvania Avenue, N. W.

Q. In what capacity, sir? A. Custodian of the records.

Q. I show you, sir, a photostatic copy of a check, and the indorsement on the back -- for the purposes of the record, the same being Plaintiff's Exhibit No. 20, for identification. If you will observe, that is a check of Orvis Brothers & Company, dated October 6, 1950, in the amount of $11,608.44, payable to the order of American Security & Trust Company.

Have you been shown that before, sir?

A. No, sir; it is the first time I have seen it.

* * * * * *

394 Q. Do you have any records showing whether on or about October 6, 1950, the American Security and Trust Company received a check for $11,608.44? A. Yes, sir.

Q. Will you produce such records? Are these the records kept in the usual course of business of the bank? A. That is correct, sir.

Q. And you are the custodian thereof? A. Yes, sir.

Q. Now, what have you produced? A. The amount shown for these secured loan and unsecured loans, $11,608.44, which is the total of your check.

Q. This check went in payment of those loans? A. I can't say it, sir.

MR. FADLER: If Your Honor please, he knows better than that.

BY MR. BOARDMAN:

Q. Whose loans were they? A. They were Murray R. Bowdan's,

B-o-w-d-a-n.

395 Q. Will you recite for the Court what loans Murray R. Bowdan had on October 6, 1950?

MR. FADLER: I object, Your Honor. The loans that Murray R. Bowdan had have got nothing to do with the matter of Orvis Brothers; and I don't think that that is material or relevant; and I think that it is highly improper that that be brought in there at this time.

THE COURT: Objection overruled.

MR. FADLER: I would like to save an exception to that ruling, please.

THE COURT: You may answer it.

THE WITNESS: It shows that he had a loan paid off on October 6, 1950, which was a secured loan, $6,000. Unnegotiable loans, in other words, his personal loans, October 6, 1950, one for $2,000, and one for $3,500. The interest on the $2,000 was $21.11; and the interest on the $3500 loan was $23.33. And on the loan of $6,000, was $64 interest. Which gives you the grand total of $11,608.44.

BY MR. BOARDMAN:

Q. Were all those loans with interest shown to be paid on October 6, 1950? A. They were, sir.

MR. FADLER: I object, Your Honor, to that question.

THE COURT: Objection overruled.

396 MR. FADLER: Save exception.

BY MR. BOARDMAN:

Q. The total amount paid on October 6, to discharge the indebtedness of Murray R. Bowdan, to your knowledge, was $11,608.44, and is the exact amount of this check?

MR. FADLER: Object, Your Honor, and for having the photostat in front of this witness.

MR. BOARDMAN: It is a matter of arithmetic. I am trying to help the Court.

THE COURT: Just leave off the check part, and have the answer.

BY MR. BOARDMAN:

Q. What was the total amount of indebtedness that was discharged on October 6, 1950? A. $11,608.44.

MR. BOARDMAN: That is all. I call Your Honor's attention that, to the penny, is this check. I, therefore, offer this now to be marked in evidence as Plaintiff's Exhibit No. 20.

MR. FADLER: I object, Your Honor, and move at this time that all the testimony of this bank official be stricken out as not relevant. I also object to the introduction of this check. The bank official said he was never seen it before; doesn't know anything about it. To tie it in would be highly prejudicial to the Defendant's case. Therefore,

397 it would be highly improper to introduce it.

THE COURT: Plaintiff's Exhibit 20 is received; and the motion of counsel for the Defendant is overruled.

(Whereupon Plaintiff's Exhibit No. 20 was received in evidence.)

MR. FADLER: I would like to save exception to the Court's ruling.

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JACK L. FRIEDLANDER

was called as a witness by and on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FADLER:

* * * * * *

398 Q. Do you know the Plaintiff and Defendant, Hilda L. and Murray R. Bowdan? A. Yes, I do.

Q. Did you have occasion to know them for years in a professional capacity? A. Mrs. Bowdan in a professional capacity.

Q. In what capacity? A. Well, I have represented Mrs. Bowdan on some general legal matters and also have had the handling of her accounting work in her office.

Q. In what year -- A. Which was done under my supervision, I

might say.

Q. In what years have you handled the accounting in her office? A. I just stuck all the files in the case. I would have to get those out to refresh my recollection on that.

Q. All right, fine. A. I would say since the year 1953, sometime during the course of the year 1953, we were retained.

Q. And that was just for that one year? A. No, for the subsequent years.

Q. Up until the present time? A. That is correct.

399 Q. Since 1953 to the present, has the Defendant Murray R. Bowdan been connected with the business, as shown on the books in any way? A. As far as I know, he has not.

Q. Have any moneys been paid to Murray R. Bowdan in any way on the books? A. I don't think so; but I would have no way of knowing that specifically. In other words, I might add this: We do the audit work and filing of tax returns, and, of course, we wouldn't have knowledge of any specific transaction, such as the payment to an individual, such as yourself, or Mr. Bowdan or myself. In other words, we never audited that type of transaction. We dealt more or less in summary figures, which were necessary to file a tax return or prepare a statement.

Q. My question was, since you have been the accountant in this firm, has any moneys been paid to Murray R. Bowdan? What was that answer again? A. My answer to that was that I don't think so, but I would have no specific way of knowing that.

MR. BOARDMAN: May it please Your Honor, if Mr. Fadler is by this desiring to prove that no money has been paid to Mr. Bowdan, we would stipulate that.

MR. FADLER: I think we have already proven that here just

400 at that time.

BY MR. FADLER:

Q. Now, while you have been in the accountant, has there been any loss or disappearance of funds from the business carried on the

books? A. Has there been any loss or disappearance of funds?

Q. Yes, without explanation. A. There was. We arrived at an explanation of it.

Q. What was the amount of that loss? A. Are you speaking of --

Q. One specific -- $12,000. A. That was supposedly taken by an employe?

Q. Yes. A. Yes. I don't know the exact amount. There was a substantial loss, but I don't have the -- I would have that in my files.

Q. What year was that? A. That was uncovered sometime last year, I believe. I would have to check that, too. I don't have the file on that particular loss; so I couldn't give you the exact date. There was an acknowledgment of that loss by the employe concerned, and the matter was turned over to the bonding company, as a matter of fact.

Q. What was the amount of it, approximately?

401 MR. BOARDMAN: May it please Your Honor, I object to this as being immaterial and irrelevant to the issues in this case.

MR. FADLER: I wanted to ask him the amount of it.

THE COURT: I don't see the relevancy.

THE WITNESS: That is why I didn't come prepared on it, to tell you the truth. I didn't know that you would want that type of information of me.

MR. FADLER: All right, let me go to the next question here.

BY MR. FADLER:

Q. Did Mrs. Bowdan receive any salary or compensation from the firm for 1953? A. Well, as you know, this was a sole proprietorship, and the only way --

Q. I didn't ask you that. Just a moment, Mr. Friedlander. You know I didn't ask that question. A. You asked me whether she drew any salary.

Q. That is exactly right. A. I am trying to explain to you in the keeping of books of a sole proprietorship, you don't carry a salary account.

Q. The answer is, no, she received no salary. A. She received

moneys from the business but wasn't in the form of salary.

402 Q. The answer is, no, she received no salary. Did she receive the profits from the business of 1953? A. Did she receive it?

Q. The profits of the business of 1953. A. What she drew out and what remained in the business was hers.

Q. What were the profits for the business for 1953, sir? A. The profits for the business for 1953, I have, $5394.92; and I am taking that from the unincorporated business franchise tax return that was filed with the District of Columbia.

* * * * * *

Q. Now, what was the profits from the business of 1954, sir? A. $16,891.05.

Q. What was the profits from the business in 1955? A. $23,032.97.

403 Q. How many cents was that? A. Ninety-seven.

Q. Now, that covers the profits to Mrs. Bowdan since you have been connected with the business; is that correct? A. Yes. I had nothing to do with those profits. That was due to her good management.

Q. Now, was that $12,000 loss sustained in 1953, '54 or '55? A. Well, as I recall --

MR. BOARDMAN: Just a moment now. He is stating $12,000. I would like to ascertain if Mr. Friedlander agrees with that. Otherwise, let's don't take it.

THE COURT: Mr. Friedlander hasn't given the amount.

BY MR. FADLER:

Q. What was the amount? A. I don't recall. I did not bring that file. I honestly couldn't --

Q. Can you give us the year, then? A. I believe the loss was uncovered -- I believe it was about last February or March.

Q. In '55? A. In '55, and it was for a time previous to that.

Q. For a time previous? A. Yes.

404 Q. What year was it in, Mr. Friedlander, to your recollection? A. Well, it would cover -- there was no specific period covered.

Q. All right. Let me ask you this: Has that been repaid by the

bonding company? A. No. The extent of the bonding company's limit, as I recall, was $5,000, and they paid that amount.

Q. The loss was in excess of that? A. Oh, yes.

Q. Now, such a loss would be reflected, wouldn't it, in the profit or loss statement of the business over-all, at the end of the year? That would affect the profit or loss statement? A. Just as any other expense of the business would, that is right.

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CROSS EXAMINATION

BY MR. BOARDMAN:

Q. Mr. Friedlander, let's clear up that loss. You not only handled that as an accountant; you handled it as an attorney; didn't you? A. That is correct.

405 Q. The fact is, it was discovered that a certain trusted employe had embezzled a rather large sum of money? A. That is correct.

Q. You do not have records or carry in mind the amount of that? A. No.

Q. Do you? A. I do not have the exact -- I have records on it. I didn't bring them with me. I do not recall the exact amount. I do not believe that it was $12,000, though. I think it was somewhat less.

Q. Was it about $7,000? A. I would say, as I recall, it was about between 7 and 8 thousand.

Q. And when this embezzlement of an employe of Mrs. Bowdan was discovered, you handled the matter to recover the amount for her, as her attorney; did you not? A. That is right. As a matter of fact, as I recall it, she had come to Mrs. Bowdan and confessed it.

Q. Let's go right along here. You are a lawyer, and we have the same trouble with you. Just answer my question. A. All right.

Q. Did she employ you to try to recover it? A. Yes, she did.

406 Q. Was the full amount recovered either from the employe or the bonding company? A. No; the bonding company paid us to the extent of $5,000.

Q. Has the employe reimbursed any part of it? A. No, she has

not.

Q. Has she agreed to? A. She agreed to at the time of the embezzlement.

Q. She confessed; did she not? A. Yes, she did. She gave a signed confession to the bonding company at the time.

Q. The $5,000 the bonding company paid has been duly entered on the books to offset the loss; has it not? A. That is right; went back into the business to offset the loss.

Q. Now, during the time you have made out the income tax returns, who have you worked for? Mrs. Bowdan or Mr. Bowdan?
A. No, Mrs. Bowdan.

Q. Have you ever had any dealings with Mr. Bowdan? A. Never had any business dealings with Mr. Bowdan.

Q. The income tax returns you have prepared, have they been for Mrs. Bowdan as an individual? A. Filed in the name of Hilda L. Bowdan, individually, and signed by her, and paid by her.

407 Q. You have made no corporate income tax returns or partnership returns? A. Oh, no.

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REDIRECT EXAMINATION

BY MR. FADLER:

Q. Is it possible or is it a fact that the loss carried on the books at this time is $7,000 from this embezzlement? A. I don't think so, because the loss was reduced at the time by the amount paid by the bonding company.

Q. What I mean is, 7 and 5 make 12, and that is what -- A. I might explain this: When you first hit me with the $12,000 -- I haven't looked at that file for over a year -- and I really didn't recall. But as it was brought to my mind now, I believe that the amount -- I don't even remember the young lady's name who was guilty of the embezzlement, but I believe that she had agree to pay somewhere between 2 and 3 thousand dollars, and I don't have the exact figure, and that is why I know it is in the neighborhood of between 7 and 8 thousand.

Q. Was a complaint ever lodged with the United States District Attorney's office for the embezzlement? A. No, no, because she came in --

408 Q. I didn't ask you that. A. I want to tell you why it wasn't.

Q. I just want to ask if it was.

* * * * * *

MARION FRANCOL

was called as a witness by the Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FADLER:

* * * * * *

Q. Where are you employed, Mrs. Francol? A. Selma's Gowns.

409 Q. How long have you been employed there? A. Oh, about twelve years.

Q. Do you know the Plaintiff and the Defendant, Hilda L. Bowdan and Murray R. Bowdan? A. Yes, I do.

Q. How long have you known them? A. Well, as long as I have been working.

Q. When you first came to work for Selma's, where was the business located? A. At the present address, 1307 Connecticut Avenue.

Q. What are your duties there at the store? A. Saleswoman.

Q. How are you paid by the store, by cash or by check? A. Cash, weekly salary.

Q. Who pays you the cash? A. The bookkeeper.

Q. The bookkeeper. Have you ever seen Mr. Murray R. Bowdan in the store? A. Yes.

Q. When was the last time you saw him there? A. A number of years ago.

Q. About how many? A. Four years. I wouldn't be certain.

410 Q. When you first came to work at the store, had you ever seen him on the premises? A. Yes.

Q. Did he have duties on the premises? Did he work on the

premises? A. No.

Q. What was he doing on the premises when you first came there? A. Well, actually, I would see him around in the evening time. I mean, I would see him, occasionally he would come into the shop.

Q. What time in the evening? A. Five o'clock, five-thirty, around that time, almost closing time.

Q. Do you work there at night? Did you work there at night? A. No, I never did.

Q. Were you ever there on Saturdays? A. Yes.

Q. Did you ever see him there on Saturdays? A. Occasionally, yes.

Q. Did you ever work there on Sundays? A. No.

Q. Did you ever work there on George Washington's Birthday
411 sales? A. Sometimes.

Q. Did you ever see him there on those days? A. I don't remember.

Q. You don't remember whether you saw him there or not? A. I am not certain.

Q. You are not certain. You wouldn't say that you didn't see him there then? A. No. I used to be out of town at that time. I would be in Florida. So I don't remember any of the particular holidays.

Q. You went to Florida on every George Washington's birthday? A. Not on every George Washington's birthday; just a few.

Q. Did you ever see Mr. Bowdan in the store on any George Washington's Birthday sale while you were working there? A. I couldn't recall to be certain.

Q. Did you ever see Mr. Bowdan do any work in the store at all? A. No.

Q. Did you ever see him make up the pay roll? A. No, I never did. I wouldn't be anywhere where it is done. I woulnd't know.

412 Q. Where would he be doing the work if he were working? A. I really don't know. I am on the floor. My work is on the main floor.

Q. Did you ever go up into the office? A. Just to get my pay.

Q. Did you ever see him up there? A. I may have; I may not. I wouldn't notice.

Q. You don't remember whether he was up there or not? A. I couldn't say.

Q. Do you intend to keep working for Selma's Gowns? A. If I am well, I will.

Q. Have you been sick lately? A. No.

* * * * * *

CROSS EXAMINATION

BY MR. BOARDMAN:

Q. You started to work there about twelve years ago? A. About eleven or twelve years ago.

Q. Who hired you? A. Mrs. Bateman.

Q. Mrs. who? A. Mrs. Bateman. She was there on the floor. Mrs. Bateman, and after she hired me, she referred me to Mrs. Bowdan.

413 Q. You went to Mrs. Bateman and Mrs. Bateman referred you up to Mrs. Bowdan? A. No, sir. I applied for the position, and the lady that interviewed me was Mrs. Bateman.

Q. Who hired you? A. Mrs. Bowdan.

Q. That is what I am getting at. My question was, who employed you? A. Oh, I see.

Q. This Mrs. Bowdan who sits here? A. That is right.

Q. Have you received any increases in pay since you have been there? A. Yes.

Q. Who has given you those increases? A. Mrs. Bowdan.

Q. Who has given you your instructions since you have been there? A. Mrs. Bowdan.

Q. Since the time you first went to work there, who has run the business? Who has been in charge of it? A. Mrs. Bowdan.

Q. You say you can't recall ever seeing Mr. Bowdan do any work around there? A. No.

414 Q. When he came in in the evening, do you know what he came there for? A. I presume to go home, to take Mrs. Bowdan home. I

really wouldn't know; but I take it it would be that.

Q. That is what you understood it to be? A. That is right.

Q. Did he ever give you any directions? A. No, sir.

* * * * * *

REDIRECT EXAMINATION

BY MR. FADLER:

Q. Mrs. Francol, what position did Mrs. Bateman have at the store when you first went to work there? A. Well, Mrs. Bateman was sort of a semi-manager. Actually, manager.

Q. Would you say assistant manager or manager? A. Manager, yes.

Q. She was manager of the store? A. That is right.

Q. Did you ever discuss any matters with Mr. Bowdan while you were there? A. The time of the day; but no matters.

Q. Did you ever receive your pay from Mr. Bowdan? A. No,
415 sir.

Q. Did you ever discuss about vacations with Mr. Bowdan? A. I don't think so.

Q. You say what? A. I don't think so. There would be no need for it.

Q. You wouldn't say that you didn't; would you? A. Well, I am almost certain I would have no occasion to.

Q. Would you say that you never received your pay from him? A. That is right.

Q. How often was Mr. Bowdan in the store from the time you went to work there until 1951? A. I never took notice.

Q. Would you say once a day, twice a day? A. I couldn't tell you. I really would never notice.

* * * * * *

417 PAUL HENDERSON

was called as a witness by the defendant, and being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FADLER:

* * * * * *

Q. And do you know the defendant, Murray R. Bowdan? A. I do.

Q. And under what circumstances have you known him? A. I know him as I think the owner of the Selma Shop.

Q. Where is that Selma shop located? A. 1307 Connecticut Avenue.

Q. Is that in the District of Columbia? A. District of Columbia.

Q. What was your occupation at the time you knew him? A. I was with the Railway Express Company.

Q. And what period did you know Mr. Bowdan? A. 43 and 44.

418 Q. And how did you come in contact with him? A. Delivering packages to his store.

Q. And what did you deliver to his store? A. Packages; I don't know what was in them; dresses, I guess.

Q. What size packages? A. About the size of a suit box, dress box, and small packages.

Q. And how often did you make these deliveries in 1943 and 1944? A. Approximately every day.

Q. Every day? A. Approximately every day.

Q. What time every day? A. Usually in the morning between 9 and 11, something like that.

Q. And was that on Saturdays and Sundays too? A. No.

Q. That was just the week days? A. Just the week days.

Q. And not Saturday or Sunday? A. No.

Q. And when you would make these deliveries who would receive them from you? A. Different ones.

419 Q. Did Mr. Bowdan receive them from you at any time? A. From time to time, sometimes once or twice a week.

Q. About once or twice a week? A. Sometimes.

Q. Did you know him in an official capacity in the store? A. No.

* * * * * *

CROSS EXAMINATION

BY MR. BOARDMAN:

Q. Let's see, you were working for the express company at the time you are talking about? A. Yes, sir.

Q. On a delivery truck? A. Yes, sir.

Q. Making deliveries all over town? A. Not all over town; a specific route.

Q. Well, you had a truckload of boxes at a time, didn't you? A. Yes, sir.

Q. And this was back in 1943 and 1944? A. Yes, sir.

Q. How do you remember that, sir? A. That was just before I went in the service. I went in the service in 1944.

420 Q. And you remember this Selma's Gowns specifically all these years? A. Sure.

Q. Out of all the places you delivered boxes to? A. Sure.

Q. When did Mr. Bowdan talk to you about testifying in this case? A. I used to run that route every day for about five years. I knew the different shops.

Q. For five years you ran that route? A. Yes, sir.

Q. And you can remember that in 1943 and 1944 you delivered merchandise to this particular one? A. Yes.

Q. When did Mr. Bowdan first talk to you about testifying down here? A. When did he?

Q. Yes, sir. A. Oh, I guess about a week ago.

Q. That is the first time? A. Yes, sir.

Q. And did he tell you that he wanted you to say that was in 1943 and 1944? A. No, sir.

421 MR. FADLER: I object, Your Honor.

THE COURT: Objection overruled. This is cross examination.

BY MR. BOARDMAN:

Q. You just told him you remembered it? A. He asked me. I didn't tell him I remembered it.

Q. You said you knew him as the proprietor of Selma's. A. I

took for granted he was the proprietor.

Q. You took for granted he was the proprietor, that's where you got that idea. A. Yes.

Q. You took it for granted? A. Yes.

* * * * * *

REDIRECT EXAMINATION

BY MR. FADLER:

Q. But you did see him there in the store to receive the goods when you brought them? A. Yes.

* * * * * *

MATILDA DENNIBERG

was called as a witness by the defendant, and being first duly sworn was

422 examined and testified as follows:

DIRECT EXAMINATION

BY MR. FADLER:

* * * * * *

* * * * * *

Q. Where are you employed? A. I free-lance. Right now I am doing some work for Isaac Kasow.

Q. Was there ever any time you were employed at a business known as Selma's on Connecticut Avenue? A. Yes, sir.

Q. And what is the address of that business? A. 1307 Connecticut Avenue, I think; I am not certain.

Q. Do you know the plaintiff and the defendant in this case, Hilda L. and Murray R. Bowdan? A. Yes, I do.

Q. What capacity were you employed in at the business known as Selma's? A. Bookkeeper.

Q. And what years were you employed there? At what time? A. I think I came there in 1949.

423 Q. And you worked there up until when? A. I think 1952.

Q. 1952? A. I am not certain.

Q. But you were there in 1949? A. In the latter part -- I believe I came there sometime in July or August of 1949.

Q. Did you work there prior to that time? A. No.

Q. Do you know an accountant by the name of Jack Friedlander? A. No, I do not.

Q. Were you there while he was there? Or I should say he was not there while you were there? A. No, sir.

Q. Did the business have an accountant while you were there? A. Yes, sir.

Q. And what was his name? A. Mr. Sherman.

Q. While you were employed there as a bookkeeper did you have opportunity to observe Mr. Murray R. Bowdan upon the premises? A. Yes.

Q. And how often did your duties require you to be upon the
424 premises? A. Every day all day.

Q. Every day, all day? A. Yes.

Q. Did you ever work in the evenings? A. In the evenings?

Q. Yes. A. Sometimes.

Q. Did you ever work on Sundays? A. No. I mean I didn't unless I had some work that I took home with me.

Q. In 1949 and 1950 and 1951, did you have a chance and occasion to observe the defendant Murray R. Bowdan upon the premises? A. Yes.

Q. And how often did you see him upon the premises? A. He would come there in the evenings I believe to pick Mrs. Bowdan up to take her home.

Q. Did you and Mr. Bowdan work together on any plans or policies for the business in any way? Did you have occasion to work with him? A. No, sir.

Q. Did you have an opportunity in 1949, 1950, or 1951 to work with him on George Washington's Birthday sales? A. Well, I think he was on the floor at the door, I don't remember, something to that effect.
425 He wasn't working. He was just -- in other words, I was upstairs; there was a balcony; I was upstairs taking cash on that day.

Q. Did he ever bring you sales slips upstairs, or receipts? A. No.

Q. No contact with him? A. No.

Q. Did you ever discuss with him payments or accounts or any sort of business connected with your activity? A. No.

Q. Was there ever a time when you needed money to pay creditors that wasn't in the business that you had to call upon Mr. Bowdan?
A. I would tell Mrs. Bowdan we needed the money.

Q. Did Mr. Bowdan ever give you any money? A. Not that I recall. I don't remember anything like that.

Q. Do you remember any discussion between yourself and Mr. Bowdan and Mrs. Bowdan about borrowing money from wholesalers at any time? A. I don't remember.

Q. Could you say that you did not ever have a discussion along that line? A. I said I don't remember.

426 Q. Did you ever see Mr. Bowdan at any other place besides down on the first floor of the busines? Did you ever see him in the basement or upstairs or anyplace else? A. He would come up on the balcony in the evenings and wait.

Q. Did you ever see him in the bottom part of the store at any time, in the basement? A. In the basement? He could have been; I don't remember.

Q. Did you ever see him check in merchandise or sign checks or hand out payrolls? A. No, sir.

Q. Did you ever work with him in planning vacations for any of the employees, or yourself, or anything? A. No, sir.

Q. Did you ever carry on the books at this time, to your recollection any sale of merchandise to any members of Mrs. Bowdan's family?
A. What was that?

Q. You were the bookkeeper in 1949, 1950 and 1951, is that correct? A. Yes.

Q. And in keeping the books were there any accounts for Mrs. Bowdan's family? A. We had some accounts like Dr. Paul Lichtman's wife, I believe, or Mrs. Jerry Lichtman. I don't remember any other.

427 Q. Do you remember carrying accounts for Mrs. Bowdan's mother, Mrs. Lichtman? A. No, sir.

Q. In 1949 and 1950 do you remember, were there any Christmas parties held at Selma's? A. I am trying to recall if it was. It so happens that my family live in New York and if I remember correctly I think there was going to be something but I was taking a plane for New York because that's where I spent my holidays with my children.

Q. You didn't see Mr. Bowdan at any Christmas party at Selma's in 1949? A. I don't remember anything like that.

Q. You don't remember what? A. I don't remember a party, because as I said --

Q. You didn't attend any of them? A. No, I did not.

* * * * * *

CROSS EXAMINATION

BY MR. BOARDMAN:

Q. Mrs. Denniberg, when you were employed in July or August, 1949, to work at the Selma Shop who employed you? A. Mrs. Bowdan.

428 Q. And during the time that you worked there who made up the payrolls? A. I did.

Q. From whom did you receive your instructions while you were there? A. Mrs. Bowdan.

Q. Who ran the business while you were there? A. Mrs. Bowdan.

Q. And there came a time, did there not, when your services were discontinued? A. Yes, sir.

Q. When was that? A. I believe it was in 1952.

Q. And when that time came who was it that informed you that your services were discontinued? A. Mrs. Bowdan.

Q. It is a fact, is it not, that during the time you worked there from July or August, 1949, the only times Mr. Bowdan came around was to drop in and visit or take his wife home in the evening; wasn't that it? A. Yes, sir.

Q. That's about what it amounted to, wasn't it? A. Yes, sir.

Q. And I suppose maybe sometimes he might have done a little something around there, or do you know? A. I wouldn't know.

429 Q. And you, I presume, as bookkeeper, kept the records as to

what the other employees were to be paid? A. Yes, sir.

Q. Who gave you that information as to what they were to be paid? A. They had a weekly salary plus a commission which was taken from the slips.

Q. But who gave you the information what their salary was? A. Mrs. Bowdan.

Q. You had all your business dealings with her, did you not? A. Yes, I did.

Q. And not at all with Mr. Bowdan -- A. No, sir.

Q. -- during the time he was there? A. No, sir.

Q. And it is a fact, is it not, that everybody understood her to be the proprietress of the business? A. Yes, sir.

* * * * * *

REDIRECT EXAMINATION

BY MR. FADLER:

Q. Do you know an employee at the store by the name of Marie
430 Atkinson? A. Yes, sir.

Q. Did you ever make a payroll for her while you worked there? A. Yes, sir.

Q. Who always gave her her money? A. Who always gave her her money?

Q. Yes. A. I handed out the payroll.

Q. Did Mrs. Bowdan ever give her her money? A. Not that I know of.

Q. How was the payroll paid? Was it by check or by cash? A. Cash.

* * * * * *

MRS. HILDA L. BOWDAN

the plaintiff, having been previously sworn, resumed the stand and
431 testified as follows:

* * * * * *

DIRECT EXAMINATION

BY MR. FADLER:

Q. Now, Mrs. Bowdan, I would like to direct your attention to your visits to Orvis Brothers. Did you ever go to Orvis Brothers with your sister, Mrs. Lichtman, Mrs. Irving Lichtman?

* * * * * *

A. I did.

Q. And when was that? A. That was in February of 1951.

Q. And what occasioned your trip to Orvis Brothers at that time? A. Mr. Bowdan had sold the stocks that were in mine and his names, and I wanted to know what the disposition was and what was remaining.

432 Q. And what did your sister do at that time with you? A. She just was with me.

Q. Did you have any conversation about this with your sister? A. Conversations with her?

Q. Yes. A. No, we went together. She drove me down town.

Q. Did she go upstairs with you? A. Yes, she went with me, yes, sir.

Q. Did she know what you were going in there for? A. Yes, she knew I was going to Orvis Brothers.

Q. And did she know what you were going to Orvis Brothers for? A. Yes, she knew, sir.

* * * * * *

CROSS EXAMINATION

BY MR. BOARDMAN:

Q. Was this trip you are talking about the one after you had phoned Mr. Bowdan from New York? A. Yes.

Q. And he told you he had sold the securities already and got about $60,000? A. That is right.

Q. And you went down and checked up on it? A. That is right.

* * * * * *

433 DONLEY DOYLE

was called as a witness by the plaintiff, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOARDMAN:

* * * * * *

434 Q. And where are you employed? A. At the Lincoln National Bank.

Q. In what capacity, sir. A. I am their auditor.

Q. And do you have access to their records? A. Yes, I do.

Q. Have you appeared here in response to a subpoena? A. Yes, I have.

Q. And were you asked yesterday to make an investigation concerning a certain check which has been marked in this case Plaintiff's Exhibit No. 19, which I show you? A. Yes. We have the deposit ticket.

Q. Were you asked to make a search of your records concerning that? A. Yes, we have.

Q. You observe this stamp on the back? A. Yes.

Q. Is that the stamp of your bank? A. Yes.

435 Q. Is that the stamp of your bank? A. Yes. When we process any checks that is our endorsement.

MR. FADLER: I object, Your Honor. You mean the photostat is your endorsement?

THE WITNESS: No, I didn't mean that at all. I mean the stamp appearing on the photostat.

MR. FADLER: Have you ever seen this before?

THE WITNESS: This stamp?

MR. FADLER: No, that photostat.

THE WITNESS: I saw it once before I came in the court room.

MR. FADLER: But that is not part of your bank records?

THE WITNESS: No.

MR. FADLER: I object, since this is not a part of the bank records and he did not make the photostat.

MR. BOARDMAN: This is Plaintiff's Exhibit No. 19.

MR. FADLER: It would be highly improper and prejudicial for this

man to identify that photostat.

THE COURT: It has been identified.

MR. FADLER: By Mr. Boardman, but this young man can't identify it.

MR. BOARDMAN: This was identified by Orvis Brothers, who
436 have the original checks, and the photostat was admitted by the Court.

THE COURT: Objection overruled.

MR. FADLER: I will save an exception.

BY MR. BOARDMAN:

Q. What were you saying about the stamp? A. Well, whenever our bank processes any check for various and sundry reasons that it would, we have to guarantee endorsements, and we do so by this stamp right here.

MR. FADLER: I object again, Your Honor. He said, "This stamp right there." There is no stamp on that piece of paper and I object to that.

THE COURT: Objection overruled.

MR. FADLER: I will save an exception.

BY MR. BOARDMAN:

Q. Now, sir, I show you this sheet and ask you what that is. A. This is one of our bank's ledger sheets.

Q. Is that from the files of your bank? A. Yes, it is.

Q. Kept in due course of business? A. Yes, it is.

Q. And it is entitled Murray R. Bowdan and Company? A. Yes.

Q. I call you attention to the endorsement on the back of the check for $700, that is Plaintiff's Exhibit No. 19, first endorsed Murray R.
437 Bowdan, and then Murray R. Bowdan and Company. Does that identify to you what happened to that check? A. Yes, it does.

Q. What did, sir. A. Well, both records here, the check was made payable to Murray R. Bowdan, and to make it negotiable Mr. Bowdan would have to endorse it in that manner, and then he subsequently endorsed it for the company so that it would appear into this account in which

it was deposited on May 10th.

Q. And do you find a deposit for $700 on May 10th? A. Yes, I do. It is right here.

Q. That is the date of the check, is it not? Did you examine your records for the original deposit slip. A. Yes, we did. We had to look it up on our microfilm and we have a deposit on that date for that amount. The deposit ticket is written up very accurately. It consisted of one check and it has the number 15-3, which is the code for Riggs National Bank. That apparently is this check right here.

Q. That has 15-3 on it too. A. Yes.

Q. Yes, it is right there in both corners. You say that record
438 is on a microfilm? A. Yes, sir.

Q. You looked at it personally, did you? A. Both myself and my secretary.

Q. And is there any doubt in your mind that that $700 --

MR. FADLER: I object.

BY MR. BOARDMAN:

Q. -- check was deposited to the account of Murray R. Bowdan? A. There is no doubt in my mind.

MR. FADLER: I object to his secretary looking at it, as hearsay.

THE WITNESS: There is no doubt in mind whatsoever.

* * * * * *

CROSS EXAMINATION

BY MR. FADLER:

Q. Have you seen this piece of paper before? Has your bank ever seen this piece of paper before? A. That piece of paper, no, sir.

Q. Is that actually the stamp or is that a photostatic copy of the stamp by the bank?

MR. BOARDMAN: May it please Your Honor I object because it is perfectly obvious it is a photostatic copy.

MR. FADLER: I would like to let the young man answer.

439 THE COURT: Let the witness say, then.

MR. BOARDMAN: All right, and it will save time.

BY MR. FADLER:

Q. Is that actually your bank stamp on that piece of paper? A. That is a photostatic copy of our bank stamp.

Q. Did you have anything to do with the taking of this photostatic copy of this piece of paper? A. Nothing whatsoever.

* * * * * *

MR. FADLER: I would like to move at this time that the witness's testimony be stricken; that it is highly prejudicial and violates the best evidence rule. The piece of paper submitted to this young man was not bank records, and these would have been available to the plaintiff if they had subpoenaed them.

THE COURT: Overruled.

MR. FADLER: Save an exception.

* * * * * *

440 WILLIAM C. STRAUSS

was called as a witness by the plaintiff and being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOARDMAN:

* * * * * *

Q. Where are you employed, sir? A. National Bank of Washington.

Q. In what capacity? A. Assistant auditor.

Q. Have you appeared in court in response to subpoena which has been served upon you to produce certain records? A. I have.

Q. And have you produced records in response to that subpoena? A. I have.

Q. By the way, does the National Bank of Washington now have the records of some other bank? A. The Hamilton National and the National Bank of Washington merged October 1, 1954.

Q. And it is now all known as the National Bank of Washington?

441 A. National Bank of Washington.

Q. And all of the records of the Hamilton Bank are now part of the records of the National Bank of Washington since the merger? A. That

is correct.

Q. Is that correct? A. That is correct.

Q. And I believe these records you brought are the original records of the Hamilton National Bank, sir? A. That is correct, sir.

Q. And are those documents under your supervision? Do you have access to them? A. Access to them, yes.

Q. Are they the documents kept in the regular course of business of the bank? A. That is correct.

Q. Have you pursuant to a subpoena produced here a record of account of the Hamilton National Bank in the name of Master Newton Doran Bowdan? A. I have.

Q. May I see it, please, sir?

(Witness handed document to counsel)

Q. And does that show the complete record of deposits and withdrawals? A. It does.

442 Q. What kind of account is that? I mean is it checking, savings, or what? A. Savings account.

* * * * * *

MR. BOARDMAN: May this be received as Plaintiff's appropriate exhibit number?

THE COURT: Plaintiff's Exhibit No. 21 is received.

(Account in name of Master Newton Doran Bowdan, in Hamilton National Bank, marked and received in evidence as Plaintiff's Exhibit No. 21.)

BY MR. BOARDMAN:

Q. Sir, would it be possible for you to have a photostat of this made? Can you make it or permit us to make it? A. We will have it made.

Q. You would prefer to make it, I suppose.

MR. BOARDMAN: May it please Your Honor, could we permit him to substitute a photostat for this?

THE COURT: Yes. He may take it with him and supply us with a

443 photostatic copy.

Let me take a look at it first, please.

Mr. Strauss, why are some of these dates shown in black and others in red ink?

THE WITNESS: Your Honor, the ones in red ink indicate interest added to the account.

THE COURT: All right. That difference will not show in the photostatic copy, will it?

THE WITNESS: It probably will not.

THE COURT: Mr. Fadler, have you seen this, before it goes?

MR. FADLER: Yes, Your Honor. I object to that. I don't see the relevancy.

MR. BOARDMAN: May it please Your Honor, a minute ago he said he didn't object, and it has been admitted and marked.

MR. FADLER: I didn't mind it being handed to the judge.

MR. BOARDMAN: I offered it in evidence and it has been received.

MR. FADLER: I would like to reconsider it.

THE COURT: I will entertain your objection and it will be overruled and the record will so state.

MR. FADLER: I don't see that it is relevant, Your Honor.

444 BY MR. BOARDMAN:

Q. Now, sir, as appears on here the deposits are shown in one column and withdrawals in another. A. That is correct.

Q. You have been asked to produce here -- by the way, this is a savings account. Is it subject to check? A. It is by the pass book.

BY THE COURT:

Q. It has to be accompanied by the pass book? A. By the pass book.

BY MR. BOARDMAN:

Q. And you have what you call a withdrawal slip form, is that correct? A. That is correct.

Q. Present the pass book and withdrawal slip and go in and get the money, is that correct? A. That is correct.

Q. If I am correct, there is shown on here one, two, three, four -- do those two stars before that 15 have any significance that you know of?

A. Not to my knowledge; I think it is in the machine.

Q. There are one, two, three, four, five, six, seven withdrawals from that account. Have you produced those pursuant to a subpoena?

A. I have produced four of the withdrawals.

445 Q. And how does it come, sir, that you have not produced the other three? A. The other three, the first two I do not have in 1946; that is May 17 and May 22. We made a thorough search in the Pennsylvania Avenue Branch where some of the records are stored, and we could not find the box containing May, 1946. It was possibly in the Seventh Street Branch and I didn't have sufficient time to go over there and come down here.

Q. Are we justified in believing that if given further time you could find those? A. Oh, yes.

Q. Just a question of time, is that it? A. Just a question of time.

Q. And that accounts for the first two, one for $1565.38 and one on May 22, 1946, for $500; is that right? A. That is right, and also this closing figure.

Q. You don't have that one? A. I don't have that one, no, sir.

Q. The others you have produced? A. I have.

Q. Are these the ones I now hold in my hand? A. That is correct.

Q. Four of them? A. Four, that is right.

446 Q. And are these the withdrawal slips upon which was withdrawn the amounts shown on the ledger cards as of those dates, sir? A. On June 12, 1946, there is one for $557, indicated on the card, and also a check.

Q. On September 5, 1946, there is one for $2,769.38. That is the check and also indicated on the card.

On January 16, 1947, there is a check for $800, and it is also indicated on the savings card.

On May 4, 1948, there is a check for $700, and it is also indicated on the savings card.

MR. BOARDMAN: Thank you, sir.

I offer these in evidence, Your Honor, being four checks.

* * * * * *

(Four checks drawn on Newton Doran Bowdan savings account marked and received in evidence as Plaintiff's Exhibit No. 22.)

THE COURT: May I see that card again?

MR. FADLER: No objection.

THE COURT: Following the name of the boy, "U.C." initials, what do those letters stand for?

THE WITNESS: "U.C.", "Under Control."

447 MR. BOARDMAN: Does your Honor care to see these withdrawals at this time?

THE COURT: Yes, I would like to see them.

BY MR. BOARDMAN:

Q. Now, sir, have you also produced the original signature card that was --

THE COURT: Wait a minute. That was No. 22. Do I hear objection?

MR. FADLER: No objection, Your Honor.

THE COURT: Very well, Plaintiff's Exhibit No. 22 is received.

BY MR. BOARDMAN:

Q. Have you produced the original signature card that accompanied the account under discussion? A. Yes, sir, I have.

Q. May I take it in my hand, sir?

THE COURT: Does that show the signatures of the persons authorized to make withdrawals?

THE WITNESS: It appears to.

MR. BOARDMAN: I offer this in evidence, Your Honor.

MR. FADLER: What was this, sir?

THE WITNESS: Signature card, the authority to withdraw.

* * * * * *

448 (Signature card for account of Newton Doran Bowdan marked and received in evidence as Plaintiff's Exhibit No. 23.)

BY MR. BOARDMAN:

Q. Now, sir, you have already explained why you haven't been able to produce the withdrawal slips for the first two withdrawals in 1946, through lack of time, you said. A. That is right.

Q. What explanation is there for your inability for you to produce the final withdrawal that closed the account? A. That is filed at the Seventh Street also.

MR. FADLER: I can't hear the witness.

THE WITNESS: You see we have different places of filing, some at the Pennsylvania Avenue Branch, some at the Seventh Street, some at the main office, and some at the Washington Branch.

I went to the Pennsylvania Avenue Branch and looked through their records and then I came on down here after receiving the call.

BY MR. BOARDMAN:

Q. You got a hurry up call to come down here, is that correct? A. I did.

Q. And are we justified in understanding that if given sufficient
449 time you could find that closing withdrawal too? A. We could find it.

* * * * * *

MR. BOARDMAN: May it be understood, Your Honor, that he may make photostats of all the exhibits and we may substitute them in the record?

THE COURT: That is agreeable, Mr. Fadler?

MR. FADLER: Yes.

THE COURT: Yes.

* * * * * *

451 MURRAY R. BOWDAN

the defendant, having been previously sworn, was recalled and testified further as follows:

DIRECT EXAMINATION

BY MR. FADLER:

Q. Mr. Bowdan, do you remember making these withdrawals from

this account at this time? Yesterday you testified you didn't re member making them? Do you remember it now? A. This identification helps me, yes.

Q. And what was this money used for? A. To the best of my recollection this might have been a joint account that we may have used for the purchase of some Government bonds.

THE COURT: Mr. Fadler, stand back and then he will talk up so we can all hear him.

THE WITNESS: It could be for some purchases that Mrs. Bowdan and I discussed and withdraw, probably bought either some bonds, furnishings for the home, or supplied some additional money for the business.

BY MR. FADLER:

Q. What are the dates of these withdrawals? A. Some of them start -- I would have to go to 6-12-46.

Q. Just the year would be sufficient. A. 1946. 9-5-46; 1-16-47; 5-4-48.

452 Q. When this account was opened was there any understanding between you and your wife as to withdrawals from the account? A. Well, everything we had was joint, to intermingle and use any and all funds at any and all times as we saw fit.

Q. How do you mean? Who could withdraw? Could either party withdraw? A. Yes, sir.

Q. At any time they wanted to? A. Yes, sir.

Q. And that was your understanding when you opened the account? A. Yes, sir.

Q. Did you ever have a conversation about any withdrawals Mrs. Bowdan might make? A. Mrs. Bowdan withdrew some of those things there on several occasions.

Q. Now, Mr. Bowdan, between 1942 and 1951 did you ever put any money into the business of Selma's? A. Yes, sir.

* * * * * *

453 Q. How much money between 1942 and 1951 did you put into the business of Selma's?

* * * * * *

A. I gave to Mrs. Bowdan for the business pretty near forty to fifty thousand dollars.

Q. Forty to fifty thousand dollars? A. At that time.

Q. And where did you get that money to put in? A. I earned that working in three wholesale houses of Mid-Atlantic, Majestic, and Try-Me Bottling.

Q. And did any of it come from the sale of securities? A. And sometimes from sales of securities also.

* * * * * *

454 THE COURT: I would like to suggest to counsel that it is much more desirable that the witness should testify and not counsel.

MR. FADLER: I had no idea of the amount, Your Honor, and the only way I could ascertain was to ask him.

THE COURT: Yes, but your question suggested the subject of it. You suggested the sale of stock. Don't do that. Let him testify.

BY MR. FADLER:

Q. How was this money paid? A. By checks I received and I endorsed them or handed them over to Mrs. Bowdan.

Q. Did you ever make payments in cash or any payments other than cash? A. No, sir.

Q. Do you know Marie Atkinson that works at Selma's? A. Yes, sir.

Q. Do you know a Mrs. Denniberg that works at Selma's? A. Yes, sir.

Q. Do you know Mrs. Bateman that works at Selma's? A. Yes, sir.

Q. Do you know a Mrs. Irving Lichtman? A. Yes.

Q. Did you ever have any conversation with her in 1951? A. With whom?

455 Q. With Mrs. Irving Lichtman? A. I have always talked with her.

Q. And what were these conversations concerning? A. I don't recall in 1951. There was very little I talked with her about.

Q. Well, I will strike that.

Did you ever have occasion to see Mrs. Denniberg, Mrs. Atkinson, or Mrs. Bateman at Selma's? A. Yes, sir.

THE COURT: Wait a minute. If that is for the purpose of impeaching your own witnesses I can't hear it.

MR. FADLER: One of the witnesses turned hostile, a hostile witness, Your Honor.

THE COURT: Well, you shou ld have announced that at the time, and not now.

MR. FADLER: Well, I think it is before the Court.

THE COURT: At any rate I haven't seen any hostility.

MR. FADLER: It is all before the Court anyway.

* * * * * *

CROSS EXAMINATION

BY MR. BOARDMAN:

Q. Mr. Bowdan, when did you have the revival of memory about that account of your son in the Hamilton National Bank and your with-
456 drawing the money? A. Just five minutes ago, sir.

Q. Just after you found that we had your signature on those withdrawals up here? A. It was when you and I talked previously also, counselor.

Q. Who did? A. Wasn't you there? I spoke about this in our other attorney's office and I started to think about it, and when I just saw that for the first time in these many years I refreshed my memory.

Q. When did you speak about it in the other attorney's office? A. In Mr. Max Ammerman's office with Dr. Irving Lichtman, maybe four weeks ago.

Q. Four weeks ago? A. Four weeks ago.

Q. And you knew about it then? A. At that moment it was brought

up for the first time.

Q. Then you remembered it? A. No, I didn't give it any more thought until just now.

Q. You gave it a lot of thought yesterday when I questioned you specifically about it, sir. You didn't remember yesterday. A. I said

457 yesterday I didn't remember this incident until I refreshed my memory now.

Q. Do you recall that I stood there and read from a paper and asked you each one and you denied each one of them? A. Yes, sir.

Q. Is your memory about the things in this case any better than your memory was about that, do you think?

MR. FADLER: I object.

BY MR. BOARDMAN:

Q. You say Mrs. Bowdan withdrew some of this money? A. Yes, sir.

Q. You point out the ones that she withdrew. A. I was told that by her brother in our attorney's office, that she drew that money out and closed the account.

Q. Did she draw out the $1,000? A. I don't know. I never saw this.

Q. Do you still deny that on May 17, 1946 -- A. I am acknowledging the checks that are presented as my signature and any withdrawals, if I did withdraw it, it was with the understanding of Mrs. Bowdan and myself that I said.

Q. Do you have any memory of any understanding you had with Mrs. Bowdan? A. Yes.

Q. You remember it now? A. I remember it, yes.

457-A Q. Tell me about this withdrawal of May 17, 1946, of $1,565.38. A. All I can tell you is that I withdrew it, and any time I withdrew anything it was with Mrs. Bowdan and my sanction.

Q. You remember it now? A. I remember that one, yes.

Q. All right. You tell us what you withdrew the sum -- A. I can't. I can only by looking at the thing. I have never seen the card. I do not remember all these exactly to the date or to the penny, but if you

confront them to me I will see and say what they are. I can't remember off-hand.

Q. Did you buy something for the boy? A. Many times.

Q. With this money you took out of his account? A. I don't know. I don't know. I can't say yes and I can't say no.

Q. Well, you wouldn't have done something else with it, would you? A. Yes. We might have done a thousand things with it.

Q. Spend his money? A. That wasn't his money.

Q. It isn't? A. No, sir.

458 Q. How about the $500 withdrawal on May 22, 1946? Did you have a conversation with Mrs. Bowdan about it? A. At all times; at all times, before we did anything we consulted.

* * * * * *

459 Q. Mr. Bowdan, it is a fact, is it not, that the money you withdrew from Orvis Brothers brokerage account you put into your business known as Murray R. Bowdan and Company? A. Yes, sir.

Q. You put it all in there, didn't you? A. All the checks that so show.

Q. And you used it in the business, didn't you? A. Yes, sir.

Q. To build up the business? A. Yes, sir.

Q. Now, sir, will you name the number of bank accounts you have at the present time? A. One account.

Q. Where is that, sir? A. Bank of Washington, 7th and Pennsylvania Avenue, Northwest.

460 Q. That is the National Bank of Washington? A. Yes, sir.

Q. Is that the only bank account you have in the District of Columbia? A. Yes, sir.

Q. Including checking and savings accounts? A. Yes, sir.

Q. And is that in the name of Murray R. Bowdan and Company? A. Yes, sir.

Q. Do you have a safe deposit box in any bank in the District of Columbia? A. Yes, sir.

Q. Where is that, sir? A. At the Bank of Manhattan, 12th and

Brookland, Northeast.

Q. Do you have any bank accounts in any banks outside of the District of Columbia? A. No, sir. I have one little savings account in Silver Spring that has a balance of $10.

Q. Therefore the only bank accounts, checking or savings, that you have is the National Bank of Washington and this bank in Silver Spring. Do you have any safe deposit boxes in any other bank either in the District of Columbia or elsewhere? A. No, sir.

461 Q. Do you own any stocks, sir? A. No, sir.

Q. Do you own any bonds? A. No, sir.

Q. Do you own any real estate? A. A part of a real estate corporation.

Q. What is the name of that real estate corporation? A. Bresh, Incorporated.

Q. And does that corporation own real estate? A. Yes, sir.

Q. And where is the real estate? A. The real estate is situated in the District of Columbia on 930 E Street and 916 and 920 13th Street, Northwest.

Q. And is title to that property in the name of the corporation?

A. In the name of the corporation.

Q. What portion of the corporation do you own, sir? A. 25 percent.

Q. And whatis the value of the real estate that the corporation owns?

A. Net worth or less the mortgages, or plus the mortgages, sir?

Q. Well, let's have all of it. What is the value of the real estate?

462 A. E Street was $150,000. 13th Street was $115,000.

Q. What are the morgages? A. On E Street there is about $90,000 and $100,000. On 13th Street it is between $70,000 and $80,000.

Q. Did you dispose of stocks and bonds since the beginning of this case? A. No, sir.

* * * * * *

Q. Since the time you were served with the summons and the papers in this suit we are trying today, have you sold any bonds or stocks?

A. No, sir.

Q. You haven't owned any since then? A. I believe that was the last time I ever owned any stock was when I closed out the Orvis Brothers account.

Q. Do you recall that shortly before you were served with the
463 papers in this case we are trying today, that is the summons and the complaint, that you were interviewed by a representative of Dun and Bradstreet? A. I don't recall.

Q. Did it happen -- A. I don't recall, sir. I don't recall it.

Q. Did you tell him that you owned $70,000 worth of stocks? A. I couldn't have said anything like that when I didn't have it.

* * * * * *

464 Q. Mr. Bowdan, do you own the place where your liquor, wholesale liquor business is, or do you rent it? A. I rent.

Q. As a wholesaler, do you carry a stock in trade? A. Inventory, yes, sir.

Q. How much? A. It varies. Thirty, 40 thousand dollars inventory; sometimes less, sometimes a little bit more.

Q. What is your total amount of stock of liquor on hand now? A. Between 30 and 40 thousand dollars.

Q. You have to purchase your liquor, under the regulations, either for cash -- A. No.

Q. -- or pay for it within thirty days; don't you? A. No, sir. Half of that sutff is payable -- it all depends on the terms you make with the distiller. We have several terms. One company ships us merchandise and we only pay when we sell the merchandise and receive payment thereon. Other merchandise on sixty and ninety days duration. Other merchandise forty-five to sixty-day duration.

* * * * * *

465 REDIRECT EXAMINATION

BY MR. FADLER:

Q. I would like to direct your attention to 1949. Did you have any other bank accounts? A. In 1949?

Q. Yes. A. Just what was said.

Q. Did you have a safety deposit box? A. Yes, sir.

Q. Where was that? A. Hamilton National Bank, Connecticut and DuPont Circle.

Q. Whose name was that in? A. In Hilda L. Bowdan and Murray R. Bowdan.

Q. In 1948 or'49, was there any unusual occurrence that happened there? A. Yes, sir.

Q. Will you explain that? A. Well, I would go in there several times -- that was about the war years; we were --

Q. No, '48 or '49. A. Forty-eight, '49? At that time, we had war bonds in there and we had $5,000 worth of cash in there; and at one particular time, about two or three days after this particular visit, I went in there to either put in a paper or take out a paper; and I found the money

466 was gone.

Q. How much money was gone? A. I was alarmed --

Q. How much money was gone? A. It was $5,000.

Q. What did you do about that? A. That night or the next night, I confronted Mrs. Bowdan, and I told her of my experience; and she said, Yes, I took it and put it somewhere. And that was the end of that.

Q. Did she tell you where she put it? A. No, sir.

Q. Have you accounted for it to this day? A. No, sir.

Q. Have you demanded she come forward or bring it in? A. No. I asked at that time; and we never talked about it. She just put it somewhere; and that is all.

* * * * * *

MR. BOARDMAN: Before I put my client back on, Your Honor,

467 the Clerk called my attention during one of our recesses to the fact that Plaintiff's Exhibit No. 13, which has been marked, and which constitutes a bunch of checks, showing certain payments made on account of the son's expenses and education since the date of the separation up to the time of his twenty-first birthday, has not been formally admitted in evidence. It refreshes my mind that I offered these just before the noon

recess and Mr. Fadler was looking them through; and I suggested he look them through during the noon recess; and then I forgot to ask Your Honor to admit them formally; which I now do.

THE COURT: Yes.

* * * * * *

(Whereupon Plaintiff's Exhibit No. 13 was received in evidence.)

MR. BOARDMAN: You asked us to total them; and the total is $4,581.77, as shown by the list on there.

THE COURT: Yes.

* * * * * *

468 HILDA L. BOWDAN

was recalled as a witness in her own behalf and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. Mrs. Bowdan, I will take up the last first. Mr. Bowdan just now testified that in 1949 or'48, you took $5,000 from the safety deposit box. Is that ture or false? A. That is false.

Q. Did you and your husband at that time have a safety deposit box? A. Yes, sir.

Q. What did you have in it? A. Bonds, Liberty Bonds, and some money.

Q. How much money? A. And some papers. About $5500.

Q. Do you know what happened to the bonds and money? A. Yes, sir.

Q. What happened? A. When I went into the box to get some papers or put some in, I discovered that the money and the bonds were missing.

Q. Who had access to that box? A. Mr. Bowdan and myself.

Q. Any other persons? A. No, sir.

469 Q. Did you ever discuss it with Mr. Bowdan? A. Yes, sir. Afterwards.

Q. What was said? A. It was his money. Everything was his.

Q. What did he say? A. He said he took it; he needed it.

Q. How about the bonds? A. He needed them.

Q. Now, the savings account in the name of your son at the Hamilton National Bank, did you have knowledge that your husband withdrew any of that money? A. I did not, sir.

Q. Did he ever discuss with you the matter of withdrawing money out of that account? A. No, sir; he did not.

Q. When was the first time you discovered that money had been taken out? A. After he left me, and I had --

Q. That was in -- A. 1952. He had left me in 1951, September.

Q. Yes. A. But after discovering all the things that happened, I went to see about the account. I was in fear of it; however, I didn't

470 think he would take my son's account.

Q. I don't think the Judge wants you to tell about your thoughts. A. I went to the bank and I inquired of Mr. Badan, who is the vice president; and he got the records for me and told me that these amounts had been withdrawn; and he showed me the withdrawal slips.

Q. Is that the first knowledge you had that Mr. Bowdan had taken the money? A. Yes, sir.

Q. Was there any money left in there? A. Yes, sir, there was.

Q. Do you recall what the amount was? A. Over $200, $229.

Q. This record shows a withdrawal on March 18, 1952 of $229.85. Do you know who withdrew that money? A. I withdrew that, Your Honor.

Q. I am not His Honor. A. Excuse me.

Q. You withdrew it? A. I withdrew it.

Q. Why? A. I knew that if it was left there, Mr. Bowdan would take it. So I withdrew it and closed the account and gave it to my son.

471 Q. What was that money put in that account for? I noticed it was started in 1942. A. For his education.

THE COURT: Has that been totaled? What were the deposits? Has that been totaled?

MR. BOARDMAN: That hasn't been totaled. We are making no point, except a matter of veracity. I should make that clear to you. I think Your Honor sees it. That is not involved in this case. If there is any

misappropriation of funds, it would be the boy's suit; and it got in here on a question of credibility.

THE COURT: Yes. All right.

BY MR. BOARDMAN:

Q. Mrs. Bowdan, prior to the time that your husband left in the latter part of September 1951, had you ever asked him to leave? A. No, sir.

Q. After the time he did leave, did he ever ask you to live with him again? A. No, sir; he did not.

Q. Your husband testified -- and I am sorry. I don't retain the address in my memory, but I think you heard the testimony -- that at one time before he left, he talked about wanting to buy or get a house at a

472 certain address. Did you hear that testimony? A. I heard the testimony.

* * * * * *

Q. Do you remember that testimony? A. I remember the testimony.

Q. Do you recall what the address was that he said? A. No; I don't remember the address.

Q. Well, whatever it was, was there ever such an occurrence? A. No, sir; there was not.

Q. Did he ever tell you he wanted to get a house anywhere?

473 A. No, sir.

Q. Now, there has been talk here about -- is it Gable-something? A. Yes, sir, Gable Company.

Q. Gable Company? A. Yes, sir.

Q. Do you know anything about that? A. Yes, I do, sir.

Q. Do you receive any income from that? A. No, sir, I have not.

Q. Is Gable Company a corporation or a name or what? A. It is a name. It is land owned by Dr. Lichtman and Dr. Gevinson, two doctors.

Q. Whose name is the land in? A. The two doctors, Dr. Gevison and Dr. Lichtman.

Q. Do you claim an interest in that? A. Yes, I do, sir.

Q. Without going into it, is there a controversy concerning it in which you and your brother and Dr. Gevison and your husband are involved? Is there a controversy over it? A. Yes, there is.

Q. And you are not receiving anything? A. No, sir.

* * * * * *

474 CROSS EXAMINATION

BY MR. FADLER:

Q. Mrs. Bowdan, I asked you this morning how many automobiles your son has ever owned or ever had; and you said, one. Do you wish to change that statement now this afternoon? A. Do I wish to change it?

Q. Yes. A. Actually, the automobile that --

Q. Just a moment. A. Yes.

Q. I said, this morning or yesterday, when I asked you how many automobiles your son had ever had, you said, one. Now, do you wish to change that? A. No, sir, I do not.

Q. He just owns one car? A. He owned one car.

Q. That is all he has ever had? A. That is right.

Q. How did he get that car? A. Selma's Gowns bought it.

Q. In what year was it purchased for him? A. 1951.

475 Q. And that is the car that he has today? A. No, that is not the car he has today.

Q. He has another one today? A. He has another one at times.

Q. Who owns it? A. Selma's Gowns.

Q. Does he have exclusive use to that car? A. No, sir, he does not.

Q. When does he drive that? A. On occasions.

Q. Does he have it at school with him at this time? A. At this particular time, yes.

Q. Is he on the pay roll of Selma's Gowns? A. At this particular time, yes.

Q. How much salary does your son receive from Selma's Gowns? A. Seventy-five dollars for two weeks, which would be $32.50 a week.

Q. $32.50 a week. How many hours a week does he put in at Selma's Gowns? A. He does errands for me in New York.

Q. Does he do this while he goes to school? A. Not while he goes

476 to school. He has a few hours in school and a few hours to study and a few hours of leisure.

Q. How long has he been on the pay roll of Selma's Gowns? A. Just a few months.

Q. Does this include a car on top of this? A. I didn't understand your question.

Q. Does he have the use of this automobile in addition to the $32 a week? A. In addition? I don't see any connection there.

Q. I didn't ask you, Madam, whether you saw any connection. I just asked you if he also had the use of this automobile of Selma's in addition to the $32 a week?

* * * * * *

477 THE WITNESS: Yes; he uses the automobile.

* * * * * *

Q. You mentioned Gable Corporation a minute ago. Is Mr. Bowdan a part owner of the Gable Corporation? A. No, sir.

MR. BOARDMAN: Just a moment. She didn't mention Gable Corporation. Gable Company.

MR. FADLER: Gable Company. Just now I asked her Gable Corporation. Do I get a chance to cross examine this witness? I said, "Corporation," and she said, yes.

THE COURT: Well, let's go one at a time here. What do you mean, company or corporation?

MR. FADLER: Corporation. I think it has been brought out now, counsel has coached her in examination. I think it is kind of unfair --

THE WITNESS: I told you, sir, it was company.

MR. FADLER: -- that he butted in at the time when I said, corporation.

THE COURT: All right, let's get along.

BY MR. FADLER:

Q. Do you know of any reason why Murray R. Bowdan would give your brother, Irving Lichtman, a check for $3,000? A. Yes, I do.

478 He owed -- he owes my brother a great deal of money.

MR. FADLER: Is it all right if I cross examine her on one question from the testimony yesterday? Could I cross examine her on some of the testimony?

THE COURT: Yes.

BY MR. FADLER:

Q. I asked you the other day in regard to your health, Mrs. Bowdan, health condition, and more particularly, your nervous condition between 1950 and 1951. Now I ask you again, what was your nervous condition during that period? A. I had no nervous condition, sir; and I still do not have.

Q. You still do not? A. No.

Q. Do you have any other nervous ailments or any nervous condition at all? A. No, sir.

Q. Do you have a doctor that treats you? A. Yes.

Q. Who is that? A. Dr. Paul Lichtman.

Q. Is that your brother? A. Yes, sir.

479 Q. Have you consulted him between 1950 and the present time? A. Yes, sir.

* * * * * *

REDIRECT EXAMINATION

BY MR. BOARDMAN:

Q. What does he treat you for, Mrs. Bowdan? A. I had rheumatic fever when I was young; and I occasionally get a check-up.

Q. I overlooked asking one question. I show you Defendant's Exhibit No. 9, which is a check of Murray R. Bowdan, payable to Selma's for $1,000, dated 11-12-1943. Do you know what that was for? A. Yes, sir, I think I do. I do know.

Q. What was it for? A. That is in repayment of a loan that was made to Mr. Bowdan.

* * * * * *

480 MURRAY R. BOWDAN

was recalled as a witness in his own behalf and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FADLER:

Q. Now, I asked you yesterday about this check to Dr. Irving Lichtman. What was that for? A. It was part of the payment for my share of stock in the Gable Corporation.

Q. Now this Gable Company, is that a company or a corporation? A. It is a corporation.

Q. Are you one of the shareholders in the corporation? A. Yes, sir.

Q. Have you received any dividends from the corporation? A. Yes, sir, for five years.

Q. Up until what time? A. Until 1951.

Q. Since that time, have you received any? A. No, sir, for the simple reason her brother, Dr. Irving Lichtman, who is in charge of this corporation -- I called him, when I was filing my year-end income tax in 1951. I asked him: What has become of my dividend check? He said to me: I will call you in a day or two. I said to him; I have to file my

481 papers and I want to get my money. He said: I will tell you the truth. I gave it to my sister. And I have never received any money since.

MR. BOARDMAN: I object, and move that be stricken out, Your Honor. That is hearsay.

MR. FADLER: I think it should be in because she has testified she hasn't received any from Dr. Irving Lichtman.

THE COURT: It is hearsay. He is repeating what someone told him. The answer may go out.

BY MR. FADLER:

Q. The last time you got the dividend check was when? A. 1950.

Q. What was the amount of it? A. At that time, I believe my shares was $400.

Q. And was that a yearly payment? A. Yes, sir.

* * * * * *

483 THE COURT: Gentlemen, the Court is prepared to rule upon this branch of the case, and I find that the plaintiff has established her right to a divorce, as asked.

There are other issues to be determined, including the settlement of property rights. All other issues may be discussed by counsel tomorrow morning. I ask you to be back at ten o'clock tomorrow morning for that purpose. And, when the time comes for writing the findings of fact and conclusions of law I will ask Mr. Boardman to include in appropriate findings with respect to issues of divorce only.

MR. FADLER: May we take exception to your Honor's ruling, and we will note an appeal.

(Whereupon at 3:50 p.m., the hearing was recessed, pursuant to reconvening May 10, 1956 at 10:00 a.m.)

* * * * * *

485 OPINION OF THE COURT

Gentlemen, I find that the dress shop is the property of the plaintiff in her own right; that the liquor company is the property of the defendant in his own right.

I find that the brokerage account represents a joint venture, the plaintiff and the defendant having equal rights. It was a fifty-fifty venture. As to that, I find that he has withdrawn $55,629.30. The plaintiff will have a judgment for half of that amount, $27,814.65.

486 I find that the certificate for one hundred shares of the cigar company -- I have forgotten the name.

MR. BOARDMAN: G. W. D.

THE COURT: G. W. D. Cigar Company stock in the name of the defendant is her individual property, and the defendant will be required to surrender the certificate to the plaintiff.

Has the Court covered all the matters except attorney fees?

MR. BOARDMAN: That is all.

THE COURT: The Court will require the defendant to pay to the plaintiff on account of her attorney's fee the sum of $2,500.00

Mr. Boardman, will you prepare findings of fact and conclusions of law and present them promptly?

MR. BOARDMAN: Very well, your Honor. Thank you.

THE COURT: And judgment upon it, consistent with what I have now said and the ruling which I made near the close of Court yesterday.

* * * * * *

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,559

United States Court of Appeals
For the
District of Columbia Circuit
FILED APR 1 1957
Joseph W. Stewart
CLERK

MURRAY R. BOWDAN,

Appellant

v.

HILDA L. BOWDAN,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Washington, D.C.
ATTORNEY FOR APPELLEE

Robert I. Thiel, Printer
Washington, D. C.
EX 3-0625

APPELLEE'S STATEMENT OF QUESTIONS PRESENTED

1. To be entitled to a divorce on the ground of desertion is it necessary that the innocent party shall have attempted to persuade the guilty party to resume cohabitation?

2. To prove desertion is it necessary for the wife to establish more than that the husband first appropriated to himself their jointly owned money, that after stating to witnesses that he intended to leave her he did leave her, that she did not consent to the separation, and that for more than two years after his departure he did live separate and apart from her?

3. After the wife had denied that the deserting husband ever had asked to be permitted to return, did the court err in sustaining an objection to the question as to whether or not the wife would have taken him back if he had asked to return?

4. Where a business corporation controlled by the husband had in 1942 by formal documents sold and transferred its assets and business to the wife, immediately thereafter by formal documents had purported to dissolve itself, and since then has never filed an income tax return, and where the wife thereafter conducted the business as her own, and where the corporation has asserted no rights, can the husband challenge the finding of the trial court that the business belonged to the wife?

5. After the husband had withdrawn without the consent of the wife and had appropriated to his own use all the money in a joint brokerage account which belonged to them equally, and after the husband had admitted at the trial that half the money belonged to the wife, did the court, at the time of awarding a divorce to the wife, err in also awarding to her a judgment for one-half of the jointly owned money?

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RULE

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UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

No. 13,559

MURRAY R. BOWDAN,

Appellant

v.

HILDA L. BOWDAN,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

The appellant husband has in the main stated the case with substantial accuracy, but he has slanted some of the alleged facts in his favor and has omitted reference to other material facts. However, it is believed that the factual situation with respect to the various points will be made clear in the argument on each point in the appellee's brief.

SUMMARY OF ARGUMENT

1. The finding of the trial court that the husband had deserted the wife for more than two years is conclusive unless clearly erroneous. The finding was amply supported by the testimony of the wife

and three corroborating witnesses to the effect that after stating that he intended to leave the wife he did leave her without her consent and remained away for more than two years. The finding was further supported by proof that before leaving the husband without the knowledge or consent of the wife had withdrawn to his own use all of the money in a jointly owned brokerage account. Although the wife made no attempt to induce the husband to return to her, there is no requirement in the law that she must have done so in order to be entitled to a divorce for desertion.

2. The wife adequately sustained the burden of proof that the physical separation of the parties was a matrimonial desertion on the part of the husband by proving that before leaving he appropriated to his own use all the money in a jointly owned brokerage account, that he announced to witnesses his intention to leave the wife, that she did not consent to the separation, that he did leave her, and that he had remained away for longer than the statutory period of two years. She denied that he ever had requested permission to return to her, and he made no claim that he had actually attempted to return to live with her or that he ever had invited her to live in a home which he had provided for her. The statement of the husband made at the divorce trial some four and one-half years after the original desertion that he was then willing to live with her, but which was unsupported by any action on his part to provide a home for her, cannot be assumed to have been made in good faith, and, furthermore, even a bona fide offer to resume cohabitation comes too late after the right to a divorce has matured into a cause of action through the expiration of the statutory period of two years.

3. After the wife had denied that the deserting husband ever had asked permission to return to live with her, it was not erroneous for the court not to require her to say whether or not she would have lived with him if he had asked her. Adjudications are made on the basis of

actual conduct and not on suppositions of what might have happened under imaginary circumstances. It is the apparent and not the secret will of parties that forms the basis of legal adjudication.

4. The trial court was correct in finding that the wife was the sole owner of the dress shop business. The corporation which formerly owned the business sold and transferred it to her in 1942, then purported to dissolve itself, and since then has filed no income tax returns. The wife continuously has operated the business as her own since 1942, in his answer the husband asserted no claim to any interest therein, at the trial he claimed that the business still belonged to the corporation that formerly owned it, said corporation even if not dissolved has asserted no claim to the business, and the husband has no standing in this case to protest the finding of the court with respect to the ownership of the business.

5. The judgment in amount of $27,814.65 awarded to the wife was for exactly one-half of the money which the husband without the consent of the wife had withdrawn from their jointly owned brokerage account and had retained to his own use. No challenge has been made by the husband as to the correctness of the calculation of the amount, and at the trial he admitted that one-half of the money had been hers and that it still was hers. Viewed either as a judgment for money converted or as a judgment making a just division of the jointly owned money of the parties at the time of awarding a divorce, the trial court properly awarded the same to the wife.

ARGUMENT

I.

THE WIFE PROVED THAT SHE HAD BEEN DESERTED FOR MORE THAN TWO YEARS.

The trial court found (JA 5):

> "In the latter part of September, 1951, the defendant deserted the plaintiff in the District of Columbia in that without the consent of the plaintiff he discontinued living with her in their former home, and since then continuously until the present time he has lived separate and apart from her without cohabitation."

This finding was fully supported by the positive testimony of the wife (JA 32-37) and by the corroborating testimony of Dr. Irving S. Lichtman (JA 59-62), Dr. Paul Lichtman (JA 62-66), and Irene K. Lichtman (JA 82-84).

The testimony of the husband that he separated from the wife at her request was not corroborated.

Furthermore, as found in Findings of Fact Nos. 6 and 7 (JA 6) and as fully supported by the evidence, the husband preparatory to leaving the wife and without her consent had withdrawn to his own use a larger sum of money resulting from the liquidation of a brokerage account owned by the parties jointly in equal interests.

It is provided by Rule 52(a) of the Federal Rules of Civil Procedure:

> "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of witnesses."

The wife's right to a divorce for desertion cannot be defeated because she made no attempt to persuade the husband to resume cohabitation with her. HITCHCOCK v. HITCHCOCK, 15 App. D.C. 81; UNDERWOOD v. UNDERWOOD, 50 App. D.C. 323, 271 Fed. 553.

In PARKS v. PARKS, 73 App. D.C. 93, 116 F. 2d 556, this court restated the law as follows:

> "A deserted spouse is not required to make attempts to end the separation in order to obtain a divorce. Even unwillingness on her part to take the deserter back does not prevent her from obtaining a divorce. 'The undisclosed emotions of the deserted party do not affect his rights' ".

II.

THE WIFE ESTABLISHED THAT THE HUSBAND INTENDED TO DESERT HER.

In the way of preparation, the husband without the knowledge of the wife acquired possession of the jointly owned funds of the parties (JA 32-35), then in September, 1951, he left her after having stated to witnesses his intention so to do (JA 35-36). Thereafter he did in fact continuously live separate and apart from her until she filed her action for divorce on October 8, 1954 (JA 1). He testified that after he left her he frequently phoned her and asked her if she would like him to come back and that she answered by saying she was not feeling good at all (JA 118). The wife testified that he had never tried to communicate with her and that never once had he called her and asked if he could come back (JA 57). It is significant that the husband did not testify that he had made a direct offer to live with her, and he made no claim whatsoever that he ever returned to their former home and tendered himself ready to live with her or that he ever provided a home elsewhere and invited her to live there with him.

It is true that while on the witness stand during the trial in May, 1956, the husband stated that he would 'take his wife back' at that time. But these mere words, uttered at a time when he was trying to avoid the consequences of his wrongdoing and totally unsupported by any action, then or theretofore, towards actually providing a home for the wife, cannot be accepted as having been said in good faith.

Moreover, a bona fide tender of reconciliation made more than four and one-half years after the original desertion would not as a matter of law defeat the right to a divorce which had matured into a cause of action upon the expiration of the statutory period of two years.

In 27 CORPUS JURIS SECUNDUM at page 578, the law as recognized by numerous decisions is stated to be as follows:

> "An offer of reconciliation by a guilty spouse must be made before the expiration of the statutory period, that is, before the other party's right to a divorce has accrued, in order to deprive the innocent spouse of his right to a divorce."

III.

THE TRIAL COURT PROPERLY REJECTED THE SUPPOSITITIOUS QUESTION.

After the wife had denied that the husband ever had called and asked if he could come back, she was asked on cross-examination whether or not if he had called and asked to come back she would have let him come back, and the trial court properly sustained an objection to the question (JA 57).

In courts of law, adjudications are based on what persons did and said in a setting of actualities and not upon speculations as to what they might have done or said under circumstances imaginary in character. Surely the wife on direct examination would not have been permitted to bolster her position by saying she would have taken the husband back if he had asked her.

Assuming that human beings are capable of estimating accurately what they might have done or would do under circumstances with which they have not been confronted, all that could be established by a truthful answer to such a question would be the secret thoughts of the

person interrogated. But, as was said in PARKS v. PARKS, supra, "Desires that are not reflected in conduct have little or no social or legal significance. The law is full of instances in which the will that counts is the apparent rather than the secret will."

Had the husband actually returned to the former home of the parties for the purpose of living there or had he actually provided a home and invited the wife to live there, her actual refusal to have resumed cohabition would have created a legal basis for adjudication.

IV.

THE WIFE IS THE OWNER OF THE DRESS SHOP BUSINESS

The finding of the trial court that the business conducted under the name of Selma's Gowns is the sole property of the wife is conclusive on the issue under Rule 52(a) of the Federal Rules of Civil Procedure unless clearly wrong.

From a record that is replete with evidence, both oral and documentary, bearing on the matter, the attorney for the husband has based his argument on little snatches deemed to be favorable to the husband.

The business originally was owned by Selma's Inc., a District of Columbia corporation with 35 shares of stock owned by one Selma Freedman. In 1942, the 35 shares were purchased by the husband, Murray Bowdan, with $500 supplied by the mother of the wife and with a 60-day promissory note for $180.00. (JA 14-16).

On August 7, 1942, the aforesaid corporation sold and transferred its entire business to the wife, Hilda L. Bowdan, in her individual capacity. The legal document effecting the transaction was signed by Hilda L. Bowdan as president and attested by her husband, M. R. Bowdan, as secretary of the aforesaid corporation, and it recited a consideration of (blank) dollars to be paid by the demand note of the purchaser. (JA 17).

On the same date, August 7, 1942, the husband, wife, and the wife's mother, all stated to be trustees for the corporation, signed a statement of the dissolution of the corporation in which it was recited that the sole assets consisted of a note payable to the corporation by Hilda L. Bowdan for (blank) dollars; and annexed to the statement was a certificate sworn to by the husband, Murray R. Bowdan, stating that the corporation had been dissolved and that the certificate was evidence of the sale of all the property and assets to Hilda L. Bowdan. (JA 18-19).

The wife testified that in payment of the property and assets received by her she gave to the corporation her note for $200 or $250 and that she paid the same (JA 24).

In her complaint, paragraph 3, the wife alleged that in 1942 she had gone into the business of conducting a dress shop from which she had derived a substantial income (JA 1), and in his answer the defendant in broad terms denied this allegation without explanation but he made no claim that either he or the aforesaid corporation owned the business or had any interest in it (JA 2).

At the trial, in the desperate attempt to grab at something that would offset his liability to the wife for her half interest in the brokerage account money which he had appropriated to his own use, the husband attempted to assert some kind of interest in the dress shop business, and he testified that he had never received any note or money from the wife in payment of the transfer of the business of the corporation to her (JA 96), and he claimed that the corporation had never been dissolved (JA 97).

On cross-examination, he admitted that the initial payment of $500 on the purchase price of the stock of the corporation had been supplied by the mother of the wife (JA 124), he asserted that title to all of said stock had been taken in his name, that he still owned it,

and that the corporation was still in existence. (JA 124). He admitted signing all the papers purporting to transfer the business of the corporation to the wife and purporting to dissolve the corporation (JA 125), but he claimed that those things were never consummated (JA 128), and that the corporation still owned the business (JA 129). He admitted that when his pretrial deposition had been taken on December 30, 1954, he had then admitted that the business had been transferred to the wife and that he had thought the corporation had been dissolved (JA 130).

Because of the vaguenesses and inconsistencies of his testimony and claims, he was finally pushed into the corner with the following questions and answers while under cross-examination (JA 131-133):

> Q. I will ask my whole question so you will see what I mean. I want to know now from you, with the advice of your attorney, whether today you claim that Selma's Gowns belongs to you solely, or (2) does it belong to your wife solely, or (3) does it belong to you and your wife as partners, or (4) does it belong to Selma's Gowns, Inc., a corporation? Now, which of those positions do you take? A. I would say if I know it would belong to Selma's Inc.
>
> Q. That is your position then now? A. Yes, sir.
>
> Q. That the business belongs to the corporation? A. Yes, sir.
>
> Q. Of which you are the secretary? A. Yes, sir.
>
> Q. And probably the treasurer? A. Yes, sir.
>
> Q. And of which you claim you own all the stock? A. Yes, sir.

Then when called upon to produce copies of the corporation's Federal income tax returns since 1942, he became evasive and made reference to when the corporation was supposed to have been dissolved (JA 132), and under compulsion by the trial judge finally gave a direct answer as follows (JA 133):

> Q. Mr. Bowdan, since August, 1942, when the papers purporting to dissolve the corporation were signed, has the corporation known as Selma's Gowns, Incorporated, ever filed a Federal income tax return?
> A. No, sir.

It should be pointed out to the court that the husband's contention that the corporation had not been dissolved and still owned the business was based upon his discovery that the certificate of dissolution apparently had never been recorded in the office of the Recorder of Deeds for the District of Columbia. (JA 167-169). He called as a witness on his behalf the attorney who had been employed to dissolve the corporation and who testified that irrespective of whether or not the certificate had been recorded the corporation, to his knowledge, had been formally dissolved (JA 169-172).

For the purposes of this case, it is not necessary to decide whether the corporation has been legally dissolved or whether it still survives in law as a fiction without assets, without business, and without income to report since 1942. The corporation is not here in this action asserting any rights, and the husband in his individual capacity has none to assert. Neither is it necessary to decide whether or not the wife gave and paid a note to the corporation as consideration for the sale of the business to her. The contract has been executed for many years, and the corporation has never sought to avoid it.

The statement made in the last paragraph on page 20 of appellant's brief to the effect that "Selma's Inc.," was "awarded" to the wife and that the wholesale beverage business was "awarded" to the husband is incorrect and misleading. There is no business conducted as "Selma's Inc.," and the wife has conducted the business as her individual property under the name of Selma's Gowns, as was found by the court (JA 5). Said business was not awarded to the wife but was found to be her sole property. The liquor business was not awarded to the husband but was

found to be his sole property, the husband having conducted it entirely in his own name as his sole property, and the wife never having claimed any interest therein.

V.

THE WIFE WAS ENTITLED TO JUDGMENT FOR THE VALUE OF HER ONE-HALF INTEREST IN THE JOINTLY OWNED BROKERAGE ACCOUNT.

The attorney for the husband has charged the respected trial judge with having arbitrarily and capriciously awarded the wife judgment for the precise amount of her one-half interest in the jointly owned brokerage account, but to support this reckless charge he has submitted nothing but a jumble of words.

The trial court found with precision that in 1946 the parties opened a brokerage account in their joint names, that both had made substantial contributions of capital which were commingled without keeping any records of the amounts contributed by each, that at all times it was understood and agreed between them that the account was their joint property in which each had an equal interest, that the said account was a joint venture, and that each of the parties owned a one-half interest therein. (Finding of Fact No. 6, JA 6).

The trial court further found that in 1950, the husband without the knowledge or consent of the wife had commenced to liquidate the brokerage account and to withdraw therefrom money which he retained to his own use and benefit, that between February 28, 1950, and December 1, 1951, when the account was closed, he withdrew the total amount of $55,639.31 in excess of the money deposited by him in the account during the said period, that all of the aforesaid money withdrawn by him had been invested by the husband in the wholesale liquor business owned by him personally, and that he had never

accounted to the wife for any part thereof. (Finding of Fact No. 7, JA 6).

These findings are conclusive unless clearly erroneous, and the husband has not made any attempt to point out a single error.

The portions of the record printed in the joint appendix, together with the original exhibits which have been brought up with the record on appeal, show that the wife painstakingly put in evidence the complete record of the brokerage account and each check showing the withdrawals by the husband. The record shows that the husband eventually admitted each withdrawal, he admitted that each withdrawal had been used by him for the benefit of his personal business, and he admitted that he had accounted to the wife for none of the money so withdrawn by him. When all the separate withdrawals as shown by the record are added together and the several small deposits made by the husband are deducted, the total is precisely $55,639.31. For the visual benefit of the trial judge these figures were all written on a whiteboard in the courtroom, and the defendant did not then challenge their correctness nor the correctness of the arithmetical calculation. He does not challenge these things now. For these reasons, this brief will not be lengthened by citing page references for the many material items of evidence.

Under cross-examination, the defendant himself testified concerning the brokerage account in such manner as to totally destroy his pretended defense against the claim of the wife (JA 139):

> Q. And Mrs. Bowdan agreed, did she not, that she would join you in that enterprise and permit her name to be used in that joint account? A. Yes, sir.
>
> Q. As well as yourself? A. Yes, sir.
>
> Q. And it is a fact, is it not, that all through the years that this account was active that you put money in it, that Mrs. Bowdan put money in it, and that money was taken out of Selma's Gowns account and put in it? A. Sometimes.

Q. And at all times that that account was in existence it is a fact, is it not, that you and Mrs. Bowdan understood and agreed that it belonged to you equally, fifty-fifty? A. Yes, sir.

Q. That half of it was hers and half yours? A. Yes, sir.

Q. Isn't that correct? A. Yes, sir.

Q. That is true today, isn't it? A. Yes, sir.

Q. No dispute about it? A. Yes, sir.

Whether viewed as a judgment for money wrongfully converted or as a judgment making just division of jointly owned property between the parties at the time of divorce in conformity with the applicable statute, the judgment for one-half the jointly owned money taken by the husband cannot be assailed. See POSNICK v. POSNICK, 96 U.S. App. D.C. 198, 225 F. 2d 37.

The statement made by the attorney for the husband in No. 4 of Questions Presented to the effect that the husband's business at the time of trial was shown to be practically defunct, and the statement made in the last sentence on page 18 of the appellant's brief that the beverage business failed, not only have no materiality to any question of law presented by this appeal but they are not supported by any evidence in the record. The statements about the parties being partners in everything including the husband's personal business, and his right to use the wife's funds for family enterprises are not based on any findings or evidence in the record.

Respectfully submitted,

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